FEDERAL ENERGY ADMINISTRATION: ENFORCEMENT OF PETROLEUM PRICE REGULATIONS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE

OF THE

COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

THE FEDERAL ENERGY ADMINISTRATION'S ENFORCEMENT OF PETROLEUM PRICE REGULATIONS JUNE 19 AND 20, 1975

Printed for the use of the Committee on the Judiciary

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FEDERAL ENERGY ADMINISTRATION: ENFORCEMENT OF PETROLEUM PRICE REGULATIONS

THURSDAY, JUNE 19, 1975

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE PRACTICE AND PROCEDURE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in room 2228, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the subcommittee) presiding.

Present: Senators Kennedy (presiding), Mathias, and Thurmond.

Also present: Thomas M. Susman, chief counsel; Kenneth M. Kaufman, assistant counsel; and James F. Michie, investigator.

Senator KENNEDY. The subcommittee will come to order.

OPENING STATEMENT OF SENATOR KENNEDY

The Subcommittee on Administrative Practice and Procedure today opens hearings on the compliance and enforcement activities of the Federal Energy Administration. The hearings will focus on the effectiveness of FEA's enforcement effort against refiners, producers, and other segments of the petroleum industry; the adequacy of FEA's procedures and guidelines; FEA's allocation of manpower in the compliance area; problems in the lines of authority and communication between the national office and regional offices; and delays involved in the processing of enforcement actions.

Under the Emergency Petroleum Allocation Act (enacted in November 1973) and the Federal Energy Administration Act (enacted in May 1974), the FEA was charged with developing, implementing, and administering Federal price and allocation regulation of the petroleum industry. In a time of rapidly rising prices and growing concern over energy production and conservation, few Government tasks are of greater importance to the American people.

Oil heats our homes, fuels our industries, powers our cars. When it is in short supply, our economy becomes immobilized and our homes grow colder. When it is wasted on some uses, other needs vital to our health and safety and comfort, and to our economic well-being, go unfulfilled. When it is overpriced, consumers are denied adequate food, clothing, and housing, the economy is thrown out of kilter, and inflation accelerates.

Central to FEA's implementation of our national energy policies and programs to keep oil prices under control is its compliance and

enforcement effort. Yet our subcommittee inquiry has disclosed disturbing problems and serious deficiencies in the way FEA has developed and carried out its enforcement activities. These problems have resulted in a compliance program that can only be characterized as inadequate.

The most important problem is the lack of clear policy, procedures, and guidelines in critical enforcement areas. FEA has no written guidelines or procedures in several highly important areas, and has incomplete or inadequate guidelines in others. For example:

There are no procedures or even a uniform policy on how to handle complaints from the public.

There are no written guidelines to assist FEA personnel in determining whether a violation of FEA regulations is intentional or unintentional.

There are no procedures, guidelines, or policies regarding the handling of cases where civil penalties may be sought.

There is no final version of an audit and enforcement manual for use by auditors and investigators.

Even where policies and guidelines and procedures have been developed, FEA auditors in the field have been given rapidly changing instructions on priorities. In some cases, these instructions have been changed by the hour; in others, instructions issued by the national office have been directly contradicted by those issued by the auditor's supervisor in the region.

A related problem has been the inadequacy of many of FEA's regulations. It has taken FEA months to devise regulations or provide needed clarifications on many central regulatory issues. Thus, auditors frequently cannot carry out an audit or determine whether a company is in violation because the regulations are vague or nonexistent. And companies do not know what is expected of them, how to avoid violating the law or how to remedy a violation because they are given few clear and definitive directions by agency rulings.

Even where regulations and guidelines exist, they cannot efficiently be carried out because of the lack of clear lines of authority and communication between FEA's national office and its 10 regional offices. FEA has long recognized this problem, yet has not acted in any comprehensive way to resolve it until very recently. There appears to be an unwillingness on the part of some regional administrators to respond to anyone in the national office except the Administrator himself. And in one region, FEA personnel were forbidden to have any direct contact with national office employes.

Another problem involves the adequacy and allocation of FEA's compliance manpower, particularly at the large refineries. For a 6-week period this year, there was only one auditor working at Exxon, the world's largest oil corporation. And Exxon was not alone—5 other major refining companies, also among the 30 largest in the country, had only one auditor assigned for periods ranging from 1 to 3 months. Even now, the major integrated companies have only two to four FEA auditors, and these auditors must review all the refining, producing, and importing operations of these giant multinational corporations.

These and other deficiencies in FEA's compliance program have given rise to inequity, unfairness, and delay. This can best be illus-

trated from the Agency's own data, provided to the subcommittee earlier this month, which show that:

Region VII in Kansas City has collected over $40,000 in penalties from crude oil producers; neighboring region VI in Dallas has collected no penalties in this area, even though region VI is responsible for two-thirds of the penalties in the Nation.

FEA collected penalties totaling $55,000 in over half of 22 violations which it settled against small or independent producers, where the violations involved $950,000. By contrast, FEA has settled 75 violations involving over $260 million against the major oil companies and refineries, but has not collected one penny in penalties for price violations against these large companies. And these corporations produce 65 percent of the Nation's crude oil, compared to only 35 percent for the small and independent producers.

FEA has directed virtually no enforcement effort against natural gas plants, which are the source of 75 percent of the propane, butane, and natural gasoline produced in this country. FEA has no auditors assigned to this crucial area, which is particularly important to poor people and to those living in certain parts of the country.

Internal FEA documents acknowledge "a serious lack of uniformity in applying FEA regulations," resulting in "the same regulations [being] interpreted and applied differently among the 10 regions," and in "national firms . . . being treated differently in different regions of the United States and in relation to their competitors." This lack of uniformity has resulted in 10 different versions of FEA's regulations, one for each of FEA's 10 regions.

A variety of reasons can be given for the failures of FEA's compliance and enforcement activities. Consumer groups are quick to suggest conflict of interest. Industry spokesmen occasionally mention incompetence. Our subcommittee inquiry has failed to turn up evidence that either of these factors is responsible for FEA's enforcement program shortcomings. Rather, I have come to the conclusion that the inadequacies in FEA's compliance efforts reflect a low priority in that area—both at FEA and in the Administration generally—consistent with the President's goal of deregulation of the petroleum industry. Internal FEA memorandums support this conclusion.

FEA's top compliance official wrote in February that: "For some time—ever since late spring 1974—the Federal Energy Administration has been schizophrenic about its regulatory programs. The administration's policy has been that we would deregulate the petroleum industry as soon as Congress would let us. Budget and staffing decisions for regulatory programs have been made with that policy in mind."

An FEA paper on regional organization pointed out that "Pressure to improve and expand the effectiveness of the enforcement program is often hampered by pressure to reduce its size and cost."

Another communication, referring to the lack of adequate data support, indicated that " 'Deregulation' has been the watchword, so why bother getting ready to regulate as well as possible?"

These documents suggest that FEA, in the past, has not made a serious effort to carry out the congressional mandate to develop and enforce a vigorous system of price regulation in the petroleum industry.

Often the blame for the agency's shortcomings is placed on the uncertainties surrounding the price controls and the length of FEA's existence. Congress surely has not always acted quickly or decisively in this area. FEA was indeed established during a time of crisis. And no one doubts for a moment the complexity of the issues before the agency.

But the FEA was formed nearly 1 year ago, and its predecessor, the Federal Energy Office, was in existence for more than 6 months before that. FEA's responsibilities and duties are critical to this Nation's ability to conserve energy resources and to combat inflation. If the agency cannot do the job that Congress has established it to do, we want to know why.

For the lack of direction from FEA's national office on basic policy matters and the lack of guidance for field employees on how they should be doing their jobs affects more than just that agency. It deprives a large and important industry of the knowledge of what is expected from them by the Federal Government. And it deprives the American consumer of the vital protection of a Federal regulatory mechanism against paying too much for oil and gasoline, for electricity, and for other vitally needed products.

Our first witness this morning is Frank Zarb, the Administrator of the Federal Energy Administration. I would like to thank Mr. Zarb for the cooperation he has extended to the subcommittee during the course of our investigation. We welcome the opportunity to hear his views on these issues. He is accompanied by John Hill, the Deputy Administrator; Robert Montgomery, the General Counsel; Douglas Robinson, Deputy General Counsel; and Gorman Smith, the Assistant Administrator for Regulatory Programs.

I want to express a special appreciation to Mr. Smith for being extremely forthcoming and responsive in responding to our various questions and in providing guidance and assistance to the members of the subcommittee. We welcome your participation.

Mr. Zarb, we look forward to your testimony. I am not going to ask to put you under oath, but as a matter of course over the next 2 days of hearings, I would like to have testimony under oath from all other witnesses. So I would like to put your associates under oath if that is all right with you?

Do you swear that the testimony you are giving will be the truth, the whole truth, and nothing but the truth?

Mr. SMITH. I do.

Mr. ROBINSON. I do.

Mr. MONTGOMERY. I do.

Mr. HILL. I do.

Senator KENNEDY. We want to welcome Senator Thurmond to the hearings as well, and we would welcome any comment he would like to make.

Senator THURMOND. Thank you, Mr. Chairman. I have a full committee meeting this morning, and I will not be able to stay here but a few minutes. I would like to express my thanks and appreciation to Mr. Frank Zarb and members of his staff of the Federal Energy Administration who came to the subcommittee this morning.

Mr. Zarb is leading an agency which was created less than 2 years

ago at a time when the Nation was caught in the midst of the Arab oil embargo, created on short notice and staffed by a group of individuals from other Government offices. FEA was presented with the job of tackling and solving a problem which had never faced the United States before. Many problems confronted the new staff which had very little experience in the energy area. To complicate the matter even further, there were no established rules and regulations which the FEA could allow in making its decisions. When you consider the enormity of the task which faced this agency, the people of the United States should be grateful to the FEA for the job it has accomplished under extremely difficult circumstances.

This is not to say the job has been accomplished without problems and mistakes. However, I am saying that the FEA has done outstanding work for an agency which started from scratch in an emergency situation.

Mr. Chairman, I would like to commend Mr. Zarb and the entire staff of FEA for the job they have done. I trust that these hearings will be of great benefit to all concerned.

Thank you very much.

Senator KENNEDY. Mr. Zarb, we know your time is limited and, since you have a lengthy prepared statement, perhaps it would be best to move through the statement and summarize or highlight it.

You may proceed in any way you want, but perhaps that would be a more effective way. We have a few areas we would like to get your responses on. I know you will be touching on some of them during the course of your presentation, but in terms of time, that might be the best way.

STATEMENT OF FRANK G. ZARB, ADMINISTRATOR, FEDERAL ENERGY ADMINISTRATION, ACCOMPANIED BY JOHN A. HILL, DEPUTY ADMINISTRATOR; ROBERT E. MONTGOMERY, JR., GENERAL COUNSEL; DOUGLAS G. ROBINSON, DEPUTY GENERAL COUNSEL; AND GORMAN C. SMITH, ASSISTANT ADMINISTRATOR FOR REGULATORY PROGRAMS

Mr. ZARB. My time problem is complicated by a request to testify before another committee. We are now trying to negotiate for one of my deputies to leave and take that assignment. I am not sure whether the other chairman is going to be willing to go along with that transaction but we are making an attempt. We will know by the time this first hour is completed here.

I consider this hearing extraordinarily important. I think it is critical to get all of the facts in the record. As you know, Mr. Chairman, some months ago we talked about the work of your subcommittee. I indicated then that we were in the process of doing a great deal of work in the area of enforcement and compliance.

I acknowledge in my testimony the areas where we have had softness and where we need to make substantial improvements. I instructed my staff throughout the Nation to make available to your staff all of the material they requested going so far as to ensure that if your people wanted to go through our files that they were to be allowed to do

so and to excerpt from those files or whatever internal memorandums they thought were important to the work of this subcommittee. I did so with the full knowledge that what the subcommittee is doing could only supplement the work that I am doing in trying to live up to the mandate of the Congress.

I think that process has worked very well and I would not have it any other way, although that is not the historic way that agencies work with the subcommittee staff.

Senator KENNEDY. I think I acknowledged that in the beginning, and it is to your credit. There is no question that in some of these matters we will get a chance to talk about what we are interested in. We want you to understand that we want to be constructive and positive in the course of these hearings.

Also, in connection with FEA's regulatory effort, we would hope that these hearings would help FEA to respond to the congressional mandate in a more effective way. That is certainly our intent. Your people have been cooperative.

Mr. ZARB. Mr. Chairman, I do think it is important that any material that is released publicly, be released in a balanced way. I was a little surprised to see only two of the hundreds of pieces of paper that have passed between us were quoted in much of the press this morning and that these documents were delivered to the press last night along with some other material.

I would hope we could look at all the dimensions of this issue, its problems, and its potential solutions, on a 1 to 1 basis so the record can be complete.

Senator KENNEDY. I am sure you will get full attention with your comments and statements this morning.

Mr. ZARB. Mr. Chairman, I think in our conversations that we are both very vigorously committed to the same objective of ensuring the mandate of Congress to insure that the laws and rules and regulations in the petroleum industry are adhered to and are complied with.

Rather than giving you a detailed summary of what we have already done in the compliance area, I will submit for the record the work that has taken place in the last 6 months in this area, I think it might be useful if I focused here on the issues surrounding the problem areas.

I would like to lay them out openly to the committee and tell you what we are doing about the areas that need improvement.

I would like to start with the manpower and budget for the national and regional compliance programs. The question of the appropriate resource level for compliance activities has been and remains an especially difficult one. Clearly, we must have a level of resources adequate to support a vigorous and effective compliance program. At the same time, we have a responsibility to see that the resources we do have are employed as efficiently as possible.

I am not going to review in detail the history of our compliance staffing; I am sure that will come out during these 2 days of testimony. I think that we might remember the conditions under which this agency was created. It was pulled together overnight by combining numerous segments of other Government offices and with large numbers of detailees from other departments and agencies involving a large number of new employees.

FEA confronted an entirely new problem with which none of us had any direct experience. Most of the people involved had little direct knowledge of the energy industry's complexity. We were in a true emergency situation which put a premium on decisive action. Given the difficult nature of the problem confronting the agency and in view of the trying circumstances always associated with the creation of a new organization under emergency conditions, the agency has done a good job of discharging its congressional mandate.

FEA met the challenge confronting it and brought us through a trying, dangerous period with a minimum disruption to our economy and our society. But of course there were mistakes made during this period. In retrospect, it is clear, we probably should have done some things differently, although I might add it was much less clear at the time when hard decisions had to be made. I am speaking on behalf of my predecessors here, Mr. Chairman, who I am sure made decisions with respect to the data that was in front of them.

We have learned from these mistakes, many of them have already been corrected and others are now being corrected. As we have gained experience we have learned how to do our job better and we will continue to improve our performance.

One of the most trying circumstances that we have to live with and still impacts the program's effectiveness today is the entire subject of FEA's regulatory activity. It was conceived as only a temporary program. At first, it was due to expire on February 28, 1975, only 14 months after it began; now, it is due to expire on August 31, 1975, 20 months after it began.

This fact has made it difficult for me and my predecessors to plan and execute an adequate staffing program. It has been hard to plan future requirements and attract fully qualified and dedicated people to an agency that offered very limited job security. We were able to staff most of our positions initially with employees from other agencies, principally the Internal Revenue Service, but they hold reemployment rights which some of them exercised either because they thought they saw the first sign of the program's demise or simply for personal reasons.

Accordingly, the program has experienced unusually high turnover. Nonetheless, despite these obstacles, by the summer of 1974, we had been able to assemble a total field compliance staff of approximately 850 people. This is roughly 25 percent of the agency's entire staff and is by far the largest single program in the agency.

One of the issues before the subcommittee, however, is whether the program is big enough. When I came to FEA last December, one of my first actions was to ask for a briefing on our compliance program. At that time, I was informed of the redeployment of people and change in program emphasis which was underway, in response to the agency's own evaluation of this program, undertaken when FEA assumed responsibility for the programs of the IRS in June 1974.

Added to that was a General Accounting Office report issued in September 1974. I was told that the authorized staffing for the regional compliance program was scheduled to be reduced from a December 31, 1974, level of 784 to a June 30, 1975, level of 711. I immediately directed that this planned reduction be canceled, that the staffing level be main-

tained at no less than 784 and that a total of 23 new attorneys and appropriate clerical staff be added to the national and regional levels to increase our legal input into these cases.

I also questioned whether this staff was adequate enough to do a thorough job of enforcing our regulations and was convinced that it was not possible to make a firm judgment on that issue until a number of measures that were underway to improve productivity and efficiency had been tested. I directed that these measures be expedited and that I be informed as soon as possible as to when we could make a judgment on the adequacy of our staffing level.

The followup report to me makes it clear that we underestimated the size and complexity of the compliance task as our program emphasis shifted away from the retail sector toward crude producers, additional effort on refiners, and more emphasis on wholesalers. In particular, our special program to audit suppliers of utilities turned out to be considerably more complex and involved than we had anticipated.

Accordingly, I have recently directed that an initial increment of 50 additional personnel be hired for the utilities program by July 1, 1975. These positions were advertised in accordance with civil service regulations on June 10.

Concurrently, I directed the development of a staffing plan and request for a supplemental appropriation to augment the request for this program submitted in the President's fiscal year 1976 budget.

Senator KENNEDY. In order to put this in some perspective for Senator Mathias and myself, what was the number of people you were authorized by the Congress to have for this last fiscal year?

Mr. ZARB. 3,310.

Mr. SMITH. 3,410.

Senator KENNEDY. How many did you have on board?

Mr. SMITH. The ceiling for a part of 1975 was 31——

Mr. ZARB. The ceiling was 3,125.

Senator KENNEDY. But the Congress actually authorized and appropriated money for 3,462 persons. So you were below the levels that were actually authorized and for which moneys were appropriated for the past year?

Mr. ZARB. Yes, by about 200 people.

Senator KENNEDY. And now you are asking for additional personnel?

Mr. ZARB. I am reminded that in the request from the agency that OMB did not deny any request for additional compliance personnel within that authorized ceiling level.

Senator KENNEDY. Certainly I speak for a majority of Senators when I say there will be no reluctance in making sure that you get all the manpower you need, not only in the compliance field, but to carry forward all of FEA's responsibilities. I think the record has been good in that particular area. I certainly will do everything I can to support those requests in terms of manpower.

Mr. ZARB. Mr. Chairman, in our hearings before the House Appropriations Committee, I indicated very clearly that we would have to come back in for a supplemental to augment our efforts in the compliance and enforcement area.

ALLOCATION OF FEA ENFORCEMENT MANPOWER

Senator KENNEDY. Are you going to get into a breakdown on how that manpower is being designated?

Mr. ZARB. I am going to concentrate at the moment on where the weaknesses are that I perceive and our plans for curing them. My colleagues here will add to some of the things I say and we will discuss how it will break down in detail. I personally requested the GAO to review our utilities-supplier audit in recent weeks in the context of the total compliance record and give me its views on the most effective use of our resources. Last Friday, the GAO informed me that in their opinion they did not see a need for a discrete utilities project and that sales to utilities should be tracked as part of our general refinery or wholesale audits.

They further recommended that no additional staff be assigned to the utilities project and that we begin a gradual phaseout of the current program.

I discussed this recommendation at length with the GAO staff, and I think we reached agreement that overcharges to utilities during the embargo could not be ignored and that it was in this area where many questionable and perhaps criminal activities could have taken place. Thus, while the GAO gave us some very useful suggestions and information, I remain more convinced than ever that the FEA needs to expand its efforts in the utilities project, at least temporarily, in order to assure the American people that the high electricity rates they are paying are at least no longer the result of unlawful pricing of fuel oil.

Senator KENNEDY. Just on this point, Mr. Zarb, I would like to have your thinking on the allocation of manpower in the utility area, versus the refinery area. As I understand from what GAO officials are expected to testify to later, and even from some of your own internal memorandums, the refinery audit program area offers the potential for uncovering the greatest abuses, more, really, than in the utility supplier audits. As you quite rightfully pointed out, we are interested in the performance of the refinery audit program, and the utility audits and all other aspects of the system. I would like to have some idea about the reasons for justifying additional expansion of the utility supplier audit program. Is this going to result in a reduction of your efforts in the refinery audit area?

Mr. ZARB. I am happy to comment on that, Mr. Chairman, because it is a decision that I have made personally. It is a management decision which I continue to hold by. In my testimony I indicate the refinery area needs to be strengthened and that we need to have a more balanced program. I am not prepared to say, however, that we ought to reduce our utility effort in order to redress the balance. I think we ought to add people to the refinery program and continue with our utility program.

Let me tell you why I feel strongly about that one dimension. During the embargo the ability for things to occur, which might have been accidental or on purpose, or even criminal, could occur most easily in those areas where there are bulk suppliers of oil. The statement which you made is not clearly an indication of GAO's position. They are looking at the dollar amounts to be recovered and saying,

perhaps, they are bigger potentially in the refinery sector than in the utility sector.

Consider for a moment utilities buying large quantities of oil from sometimes strange sources during the embargo period because of their concern for stocks being decreased. Consider also that utilities, particularly during that period, were able to pass through to consumers their increased residual fuel costs, particularly in the Northeastern States; add to that further our early experience where we have had, of the cases underway, some $15 million of potential recovery, and we have only had a small percentage of our total target to be attended to. We calculate we can go up as high as $60 million or $70 million in this area. Moreover, the potential dollar recovery is not the only indicator of what areas we ought to be examining. Here is an area where there could have been mischief to the extent of criminal activity of some size. Utilities buying large quantities passed it along to consumers. There were a number of wholesalers that became wholesalers during that period, but that no one had ever heard of before.

We have enough early experience that convinces me that, regardless of the dollar amount finally recovered, we need to sweep through this area and complete that audit. That reaches even to the time where this agency might be no longer in existence. As you know, we do go out of existence a year and a half from now. I propose we set up this structure and that this structure complete its audit even if we expire as an agency, so that institution can move over to another agency and complete that work.

I do not, having said that, say that we should not reinforce our refinery audits. I think they need to be added to. I was shocked when I learned that we had only one auditor at one of our biggest refineries during an early period of this year. I am equally troubled by the fact we have only four within that refinery right now. I just cannot lie on the notion that we have reduced in this one area of investigation to prepare a balanced program. I think we are going to have to add a step to the balance.

ONLY 94 AUDITORS AT THE 30 LARGEST OIL COMPANIES

Senator KENNEDY. As I understand it, you have only 94 people working on audits of the 30 largest refineries; you have asked for 470 more people to work on the utilities supplier audits.

Mr. SMITH. Senator, the purpose of asking for the initial increment in the utilities investigation was to accelerate the completion of that program, as Mr. Zarb indicated, and that initial increment will permit the redirection of auditors now committed to the utilities program, who are already on board, into the refinery programs.

Of two goals, the first is to get the refinery audit program up to its authorized staffing level of 190 where we've been unable to get it to date. Second, in the early part of this year we revised our approach to the refineries to an audit module concept that set out the material provided to the staff. We are now evaluating how many auditors we need in which refineries under this new audit module concept.

The point Mr. Zarb made is we know we need more, but we're just not able to make any sensible management judgment as to how many more at this time.

The first objective is to get the 190 we're already authorized, then evaluate, based on our experience with this new modular approach to the audit of refiners, how many more it takes to do the job and do it right.

Senator KENNEDY. You do not have that now—the number of auditors you need to audit the major refineries?

Mr. SMITH. No, sir, we have not had enough experience with this new approach to be able to say that it takes seven people in Exxon and eight in Texaco and four in Petrofina, and this kind of thing. We're accumulating that experience now and, on the basis of actually going through the first series of these new modules, we will find out how long it takes an auditor to do a particular module and do it thoroughly, which will vary based on the size of the refiner.

We have been accumulating that data for the last 4–5 months. When we have that accumulation, we will be able to add people as we find out we need them.

Senator KENNEDY. As I understand it, that data has been accumulating for 4–5 months. It somewhat surprises me that you cannot tell the approximate number of people you are going to need in these refineries to do the job. It may be either 2 or 3, or 10 or 12, but you must have some idea that 2 or 3 cannot do a complete job, and that therefore, you will need at least 10, or maybe you can do it more effectively with 14, or something of that description. It is somewhat difficult to understand why you cannot get a greater degree of precision in terms of the manpower you need at these major petroleum refineries.

Mr. SMITH. There are two questions involved. One is what you do, and what we want to do is a complete and thorough review of all the regulated transactions in those refineries, to include an area that the General Accounting Office pointed out to us, and that we were aware of, which is the audit of the production of crude oil controlled by those refineries. That's the first step.

The development and implementation of the specific audit instructions for each of those, each piece of that package, has been underway over this period. We did that because that, in our judgment, would improve our ability to deploy our audit effort effectively since we run some audits at all refineries and all audits at some refineries, and we can get a survey of the entire industry without having to audit every transaction in the industry. This will identify areas that need concentration. That process is still underway; it simply has not been completed.

The second question is the one of how much time, how fast we need to do this. Two people can audit Exxon if you give them long enough. Clearly, in our judgment, it will take too long if you restrict it to two people. Twelve people can audit Exxon a lot faster, and the question is, depending on the results of these first rounds, how often do we need to perform each of the various modules.

Senator KENNEDY. What is your decision on that?

Mr. SMITH. I don't have one yet, sir, because I don't have the factual basis on which to make one. I'm accumulating information on it. I will have one within the next several weeks.

Senator KENNEDY. What is the policy, Mr. Zarb? When do you want to have that kind of information?

Mr. ZARB. The commitment I have from Mr. Smith, Mr. Chairman is to have those answers for me by July 1. I hope we are going to meet that target.

Senator KENNEDY. Wait a minute. I am not asking about when you will know about how many auditors you need to do an audit of a particular refinery. What I am interested in is, as Mr. Smith has pointed out, that decisions have to be made as to whether you want that information in 2 months or a year. It seems to me that you ought to be able to make that judgment right now. Then, a decision must be made as to whether you can achieve that particular goal by having 12 auditors or 20 auditors. What is the policy now? When do you want that kind of information for the review of the major refineries?

Mr. SMITH. It's not that simple, sir. In some of the particular areas, crude production, for example, it may not be and, in fact, is not necessary to conduct an audit every month. For example, once having established what's old and what is new oil in each lease, all that is required is to watch the total amount; and having established the number of leases involved, you no longer have to conduct a thorough audit of the base period. All you have to do is watch every month, the amounts of old and new oil claims from those properties, and this takes much less time and effort than the initial audit to establish the baseline figures.

Mr. ZARB. Let me answer the policy question, Mr. Chairman.

CRUDE PRODUCER AUDITS HAVE FOCUSED ON INDEPENDENTS

Senator KENNEDY. Before we leave that, have you monitored the crude oil production of the major integrated refining companies? Have you done that?

Mr. SMITH. No, sir, we have not yet. We have not completely audited the production of the majors.

Senator KENNEDY. What percent of the production do they have?

Mr. SMITH. They account for about 65 percent of the total crude production, but that does not mean we have ignored the area, Senator, because what we have done is track at the total production level the trends in new and old oil, and we have seen no sharp increase in the amounts of new oil sold over and above what could be explained by the normal decline in production in the fields. Therefore, by monitoring the overall national average old oil ratio, it is clear that there is no large-scale diversion of what should be old oil into new and released oil, so the fact that we have monitored the total results, has been a basis of establishing priorities within the refinery efforts. Because we know from the totals there is no massive, large-scale violation going on in this area, we have chosen to concentrate our results on other areas where we had no such overall indicator.

It was not a question of priorities in terms of the importance of the efforts, sir. It was a question of how to go about the work and what work needed to be done first.

Senator KENNEDY. It so happens that those you have concentrated on are the smaller and independent companies, are they not?

Mr. SMITH. Those crude-producer audits we have done have been targeted at the independent producers, who are smaller, more widely

dispersed, and for whom we have no other centralized records, such as we do at the major refiners.

Senator KENNEDY. In that particular program the independent producers account for approximately 35 percent of the domestic production, and your figures show that you have collected penalties in 12 of the 22 violations amounting to $55,000. Is that correct?

Mr. SMITH. That's right, sir.

NO PENALTIES AGAINST MAJOR OIL COMPANIES FOR $267 MILLION IN PRICE VIOLATIONS

Senator KENNEDY. Can you tell me why there have not been any penalties against the largest oil producers and refineries, such as Exxon, Gulf, and Texaco? Are they more honest than the little guys?

Mr. SMITH. It's not a question of more honest; it's a question of more capable. They have more qualified lawyers who spend their time analyzing every line and phrase in our regulations. They have the high-powered auditors who have access to the numbers and the computerized capabilities, so that they have a greater capability to understand, interpret and comply with our regulations than does the small independent crude producer, who's running his records out of a log book kept in the back of a pickup truck.

Senator KENNEDY. Did you find violations with the major oil companies that you did look into?

Mr. SMITH. In terms of crude production?

Senator KENNEDY. In terms of penalties that were levied against the major oil companies.

Mr. SMITH. No, sir, we have not collected any penalties.

Senator KENNEDY. Did you find violations among the major refiners?

Mr. SMITH. There were violations of regulations; yes, sir.

Senator KENNEDY. To what extent were there violations?

Mr. SMITH. I don't have the figures but $163 million——

Senator KENNEDY. Would $267 million seem to be correct?

Mr. SMITH. Depending on what you count; yes, sir. And in fact, there have been substantial——

Senator KENNEDY. So even with all their good auditors and lawyers, they have not been quite as sharp with the pencil to the extent of $267 million, according to your own figures.

Mr. SMITH. Two kinds of violations, Mr. Chairman.

Senator KENNEDY. Have there been violations up to $267 million?

Mr. SMITH. Yes, sir, but the overwhelming majority of those violations have been the result of a difference in interpretation of FEA's regulations. There is plenty of material in that submitted to your staff; and a reading of our regulations themselves will disclose they are far from precise with respect to their application in the factual circumstances all across the industry. They are susceptible to different ranges of interpretation.

Senator KENNEDY. Why do we have one standard for the big guys, and another for the little guys?

Mr. SMITH. No, sir, we don't have one standard for the big guys and another for the little guys.

Senator KENNEDY. If the regulations are confusing and they are subject to misinterpretation, why is that not as true for the little fellow as it is for the big guy? On the other hand, your figures show, there are $267 million in violations by the big fellows, even without the kind of intensive types of investigations that you have performed on the small people. In spite of that, you have found $267 million in violations among the majors. And yet you have had penalties paid by the small independent companies. And even with the $267 million in violations, not one dollar has been collected in penalties from the major oil companies.

Mr. SMITH. We are talking about two different things, Mr. Chairman. The violations you keep referring to and the penalties on small independent crude producers relate to the production of crude and its sale and new, released, and stripper oil. The audit of that production has not yet been completed for the major refiners. And you may be assured, sir, that if we find the same kinds of violations on the part of major refiners as we have found on the part of the small producers, we will assess the same or—because they are more capable—more severe penalties on the major refiners than on the smaller producers.

Senator KENNEDY. All right.

When do you expect those to be completed for the major oil companies to the same degree of review that you have done for the independent oil producers?

Mr. SMITH. Our target is to have those audits completed by the end of this year, sir.

Mr. HILL. I might add, Senator, there are various pieces of the auditing that go on within the major oil companies that are occurring on a fairly firm schedule, and results of those audits and those activities will be released as soon as they are available. Tomorrow, for example, we are ready to announce and issue notices disallowing about $170 million of costs of the majors, the 15 major oil companies, arising out of how they treated sales between affiliates of oil imports through the embargo. So, this is another part of the overall regulatory program. This one is aimed particularly at the majors. It amounts to about $170 million. This is something that has been underway; it is ready to go. Every month we will have different pieces being completed on this overall program and will be making those efforts.

Mr. ZARB. Mr. Chairman, I will summarize the rest of my statement.

Senator KENNEDY. This is important. I just want to finish this point on it, and then we will move on to the statement. With the apparent confusion of the rules and regulations which Mr. Smith admits to being subject to different kinds of interpretation, it seems to me that it is not unreasonable to conclude that there has been a more vigorous pursuit of the regulations as they have applied to the independent producers than to the major ones. And it would seem that on the one hand, if the major oil companies make a mistake, it is because, with all their auditors and lawyers, a sort of honest mistake involving confusion of interpretation has been made; while if the small producers make a mistake—in view of the penalties which have been collected by FEA—then it is a matter of some guilt. It seems to me that we have had a double standard applied.

Mr. SMITH. Mr. Chairman, I'd like to try again to convey the understanding that the conclusion which you apparently are reaching has

no basis in fact, because we have not audited the majors of the same kinds of things as we have the independent producers. The $267 million to which you refer are violations of other parts of the regulations than those involved in the small producer audits. So there is no question of any double standard, there is no evidence of any double standard, because we're talking about different parts of the regulations.

And you made the point yourself—and there's plenty of evidence in the material you have—that our regulations have not been applied uniformly in every case across the regions. But in this case, they have not even been applied yet in that we have not finished our audit of major crude production.

I assure you there is no double standard favoring either majors or small independents. There is only one standard and that is that everybody will comply with our interpretation of the regulations. If a violation indicates any intent to evade the regulations or overcharge the public, that violation will be subject to collection of penalties. And if it indicates any criminal intent, it will be forwarded to the Justice Department for determination of prosecution. That applies to everybody; big, medium and small.

Senator KENNEDY. Why, then, did you not start in with the big boys before you went to the small independents?

Mr. SMITH. I explained earlier, sir, that we did not have enough people in the refinery audits to do everything. That we had evidence that the national totals of old versus nonprice controlled oil were not changing in any substantial manner, and therefore there were no gross violations on the part of the people who were producing most of the oil. If there had been a monstrous ripoff on the part of the majors, the national average of old oil would have shown a sharp decline. That's the only thing that could have happened. It did not do that.

Senator KENNEDY. How would you know that unless you investigated it?

Mr. SMITH. By watching the total of the amounts of old and new oil reported as sold, sir. We got reports monthly. We added up those reports on a monthly basis of old versus new oil. And we watched those as we went along. That's a different thing from a detailed audit of each lease for each producer.

FIRMS NEED A LARGE STAFF TO COMPLY WITH THE REGULATIONS

Senator MATHIAS. Mr. Chairman, if I could ask a question at this point, which relates to the relationship of the large and small factors in the industry.

Do you think the time has come, Mr. Smith, that regulations are so complex that in fact only the majors are really technically able to comply with them?

Mr. SMITH. None of the majors were, sir?

Senator MATHIAS. Only the majors.

Mr. SMITH. I think that's part of the problem. As I have outlined to the Senator, the regulations are so complex that to comply with all of their provisions takes a substantial legal and audit staff; even that does not do it sometimes, because we'll come along and make a ruling that says within the range of reasonable interpretations we come out over here [indicating] generally the hard-nosed approach.

And you cannot claim that somebody is trying to be venal if he has come out somewhere else.

Senator MATHIAS. Do you have other complex areas of Government regulations which I think create an enormous burden on American business. State taxation of interstate commerce, is an example—where the small businessman is helpless? All he does is take his tax notices and files them in his bottom drawer because he does not know what else to do with them. He does not have the computers and the accountants and tax lawyers to deal with this problem.

Is that the kind of situation we are getting into in this area?

Mr. SMITH. Yes, sir, in many aspects of it. It's particularly true in the crude production area. In most of the other operations, there isn't anybody but the refiner in the business. It's also true to some extent in the question of the small refiner struggling along with what amounts to a very small distillation plant or something, trying to stay alive from one month to the next on cash flows. He does not have the resources to devote to this kind of effort that some of the bigger ones do.

REGULATION LEADS TO FURTHER CONCENTRATION OF THE INDUSTRY

Senator MATHIAS. Let me carry that one step further, I guess, in the direction of Senator Kennedy's point.

What is the long-range effect of this complexity of regulations, what its admitted adverse effect on small businesses are going to do to competition in the long run?

Mr. SMITH. In my judgment, the continued application of the kind of detailed regulatory framework we now have can only result in further concentration of the industry, notwithstanding the specific provisions in those regulations responding to the congressional mandate to try to give a competitive advantage to the small refiners.

Senator MATHIAS. So, what you are saying is that really the course we are launched on is going to make the big boys bigger and the small ones finally disappear.

Mr. SMITH. In my judgment, it can very well have that undesirable result if pursued in the manner we're pursuing it now, yes, sir.

Senator KENNEDY. To carry it on, then, why isn't FEA doing something to try and simplify it for the smaller producers, or to apply stricter enforcement against the large ones?

Mr. SMITH. Let me turn to Mr. Montgomery, the General Counsel.

Senator KENNEDY. I just want to complete this final point. I question your explanation about being able to review monthly figures for the amounts of old and new oil and thereby being able to make some judgments about what the major oil companies were doing. I cannot believe, although I stand to be corrected, that you are going to be able to tell, even from those overall figures, whether certain ones of the major oil companies are not cheating.

Mr. SMITH. No way; absolutely. I would not represent that for a minute.

Senator KENNEDY. That is the point I was making. You have a segment of the industry which has 65 percent of the oil production.

We will take a short recess.

[A brief recess was taken.]

Senator KENNEDY. The meeting will return to order.

The point I was making is that since the major oil companies do have that percentage of the market, and since you cannot tell whether the majors are following the rules and regulations, or misinterpreting them, it would be impossible to determine, just from overall figures, whether there are violations. And that is going to mean a loss of hundreds of millions of dollars to consumers. I understand the overall monthly figures have been quite variable, in any event.

Mr. SMITH. Mr. Chairman. There are a couple of points I would like to make. First, we watch the overall totals. Since the implementation of the entitlements program, we now receive a monthly report from each company, so we watch the individual progress on a month-to-month basis. Then, the third level of coverage is the actual detailed audit of each of those companies' production records, to compare their performance in the base period to their performance in the reported period. I indicated to you we have not completed any of those yet. I did not mean to leave the impression we had not started them. We have done a major share of them at 10 of the largest refiners. In that process, although it is not yet completed, we have already identified 13 probable violations on individual leases by those companies. Your point is entirely correct in that, simply by watching overall totals, we cannot say and have never alleged there are not a large number of individual violations in those totals. The point is, however, in watching the overall totals, we can say there is no massive series of violations on the part of all of the companies or combinations that could result in any huge overcharges to the American consumer.

Senator KENNEDY. Do you have better evidence that in the utility supplier area, there is going to be a greater opportunity for finding violations?

Mr. SMITH. Greater than in the refineries?

Senator KENNEDY. Yes.

Mr. SMITH. No, sir, and I see no conflict between these two areas. There has been, as your staff has evidence, because of some sloppy management practices and our insistence on getting moving on the utilities, a response in the field that we did not intend, which has been to divert refinery auditors into the utilities area. That practice has been terminated. I'm not going to say it isn't happening somewhere today, because you'll drag out a case where it is. But we're in the process of correcting that error right now, and in terms of the management of the overall program, there isn't any conflict between pursuing a vigorous refinery audit program and pursuing the utilities investigations at the pace they need pursuing. The answer is, we've got to do both, Mr. Chairman.

Senator KENNEDY. If you can do both, and you have the necessary manpower and resources, that is something else. But the fact that you have had only one or two auditors in some of the major refineries would indicate that you have not had a very significant increase in manpower in that area. Let me ask this. If you find violations in the utilities suppliers area, you cannot pass on a refund to the consumer. But in the refinery area, you can. Is that right?

Mr. SMITH. That's right. If we find one in a refinery—let me back up a minute. It's not quite that easy. We can't mandate the pass-through of a specific check in a specific amount to the electric utilities customer, because clearly, the electric utility is not within our juris-

diction. Our policy is that if we mandate a refund to a utility from his supplier, we also notify the regulatory commission that has authority over that utility as to the fact of the refund, to see that it will show up in the form of either a rate reduction or a decrease in the next rate hike to that utility's consumer. In the petroleum industry, clearly, since we exercise regulatory authority all the way down to the retail level, we can fashion any of a number of appropriate remedies for getting restitution to the consumer.

NOTIFICATION OF STATE UTILITY COMMISSIONS

Senator KENNEDY. Have you notified the State regulatory commissions every time that you have found any violations in your utility supplier audits?

Mr. SMITH. The agency instructions are, and the agency's policy is that whenever we mandate a refund from a supplier to a utility, that the Public Utility Commission and the appropriate body in that State, or the Federal Power Commission, if it has jurisdiction, will be notified. We have established coordination with the Federal Power Commission on this.

Senator KENNEDY. Has that been the case?

Mr. SMITH. It has been the case in some, and I would not bet a nickel more than I could afford to lose that it's happening in every case.

Senator KENNEDY. This is one of the areas where policy is not being carried out in every case.

Mr. ZARB. Mr. Chairman, I have discussed this matter with the Governors' conference at different times, and asked the Governors to ask the regulatory commissions to link into whatever we are doing in this area. I would like to summarize the rest of my statement, since we have gone somewhat longer than I think you wanted us to.

The levels of dollars and opportunities in different areas is an interesting area to talk about from a management standpoint. It does not really have a lot of merit here. The chairman of another committee on the House side in the last 2 weeks told me that he had indications from some of my staff people, there is some $5 or $6 billion to be recovered in the utility sector. We do not think the numbers are anything like that, but we are not sure what the numbers are going to turn out to be, and will not know until we complete it. In this area, the policy decision is quite clear in both the refinery area and the utility area, as well as the other areas of our mission. We have to complete audits of activities that took place, particularly during the embargo, and have sufficient staff on an ongoing basis so that there is no question as to what our intentions are with respect to enforcing the law.

Mr. Chairman, your question with respect to double standards for different sectors of the industry should be answered quite clearly. In our agency, we do not have separate standards. We are going to enforce the law equally. We spell out quite clearly where we have to go with respect to additional resources to complete the work we have underway. Mr. Smith has indicated that we are well into the refinery program, and we have identified a number of opportunities that we think are going to be fruitful with respect to crude production areas.

I think it is clear as to what we have done in the last 4–5 months in this area to move this program along.

I want to point out, also, that I have asked the GAO, since our last discussion on this subject, to give us additional counsel and advice on methods of conducting these audits to get testing accomplished, or set priorities in a more realistic way. We are experiencing what other agencies that have been in existence longer than we have experienced. I look forward to their continued help in this area. An important policy area, I think——

CONFUSION HAS RESULTED FROM LACK OF COMPLIANCE MANUAL

Senator KENNEDY. Just before we leave that rosy picture about the situation in your own shop, I have here a memo dated January 16, 1975, from Harold Butz, Jr., the Deputy Associate Assistant Administrator for Compliance and Enforcement, to all national office compliance and enforcement staff. The memo states, and I quote:

> To avoid . . . confusion . . . all policies and guidelines . . . should be incorporated in the Compliance and Enforcement Manual as soon as possible.

[See appendix for text of full memorandum.]

That was 6 months ago, and the manual has still not been completed, indicating that there has apparently been 6 months of continuing confusion. What is the situation on that now?

Mr. SMITH. It hinges on one's definition of continued confusion, sir. I would rather state it as a continued decrease in the absence of specific guidance in the field. Since the first of January we have issued 49 separate pieces of guidance. These are in the process now of being codified into a Compliance and Enforcement Manual. One of the things that comes out clearly from the material submitted to your staff, and from Mr. Zarb's statement, is that when we launched this compliance plan in January, we underestimated the magnitude and complexity of what needed to be done. The current target date for the issuance of the comprehensive compliance manual is the first of October this fall. That does not mean we have been waiting until we could solve all the problems in order to get at the most important ones. What we have been doing is operating on two parallel tracks: first identifying those areas needing specific guidance, developing that guidance, and getting it out so it can be effective as soon as possible; and concurrently, incorporating that guidance and working on other material to embody in a single, comprehensive manual that we could issue as soon as it was right and complete.

Senator KENNEDY. As I understand it, the first draft of a Compliance and Enforcement Manual was developed in June of 1974.

Mr. SMITH. Yes, sir. It was issued at a conference of all supervisors.

Senator KENNEDY. And in Mr. Butz's memo of January 16, 1975, he stated, and I quote:

> A basic Compliance and Enforcement Manual already exists, but it needs substantial revision and amplification. Accordingly, the recently approved Compliance and Enforcement Manual is to be updated by March 15, 1975.

Now, you are telling us the manual will not be ready until October?

Mr. SMITH. That's right, sir. I wish it had been the 15th of March, I wish it had been June 30.

But to do it right and do the job that needs to be done, I would rather wait until the first of October and get it right, and get it out, so it will then be available to all people and go to a number of deficiencies you're going to hear about in these hearings.

Senator KENNEDY. That is the point. I do not doubt that you are sending a lot of other kinds of rules or guidelines out to these various offices. But without this, I think you are running into serious problems of misinterpretation and confusion in these areas.

Mr. SMITH. I agree we need to do it. We're doing it as fast as we can.

Mr. ZARB. I would just point out, Mr. Chairman that Mr. Smith and I have had lengthy discussions on this, plus training manuals, training activities, organizational questions, recording machinery, all of which are covered here in my testimony. He has been advised that he has the capability to get whatever resources are necessary to shorten that time line of the resources to get the job done. I am not sure, Mr. Chairman, that I should not submit the rest of my statement for the record. It is going to take some time, particularly if we stop. I would like to read the conclusion.

It is clear, Mr. Chairman, that the areas the subcommittee is examining, which really turn on the question of effective management of our compliance effort, are still in the process of being meaningfully improved. Members of our professional staff in the field and at the headquarters have undoubtedly experienced a series of frustrations, delays, or difficulties during the short history of our organization and the evolution of its adjustments.

Unfortunately, there is no way to bring the level of our operations up to desired levels of efficiency and effectiveness in a few days, a few weeks, or even a few months. However, we have embarked on this task in a way that will build a sound foundation for our activities rather than simply fight fires from day to day. We are committed to completing this strengthening process, and I give you my assurance that this commitment will remain as long as I have this responsibility.

Within the last 60 days, the Senate has confirmed the appointments of two key people who will be responsible for much of the implementation of our plans; Mr. John Hill, who was here earlier, as Deputy Administrator, and Mr. Smith as Assistant Administrator, responsible for enforcement and compliance. The Senate now has before it the President's nominations of Mr. Eric Zausner as Deputy Administrator and Mr. Thomas Noel as Assistant Administrator for Management and Administration. These key people share my commitment to upgrading our compliance program and our other programs as well. With them in place, I expect to see the pace of improvement pick up sharply.

We recognize, Mr. Chairman, responsibility for compliance efforts that will extend well beyond the expiration of our current regulations. We must complete a thorough audit of the industry's practices, especially during the period of the embargo, to assure the Nation's consumers that they have been treated fairly. Because of the particular vulnerability of utilities to overcharges, which stems from their requirement to continue to provide service and the fact that some of them may have been in a position to bargain less hard for supplies of

fuel than other customers, we need to expand that effort, as I have described before. Our refinery audit program needs more manpower and better procedures, and producer audits need to have additional effort.

Moreover, we must be prepared to respond to future developments more rapidly and effectively than we have been able to do in the past. We must assure not only that FEA's regulations are complied with, but also that any evidence of criminal intent is brought immediately to the attention of the Department of Justice for appropriate action.

Mr. Chairman, my testimony was written specifically to get into the problem areas, and not tell you all the good things that have occurred over the last 6 months. I think your staff has had adequate interest to tell you a balanced story. The work that has occurred since January of this year in this particular program, and the priority that I have personally put on it speak for themselves. More important than these, in my view, is the way we have approached this responsibility. We are determined to learn from our mistakes and from our successes, and to continue to take whatever measures may be required to improve our programs. I think a great deal of progress has been made. You see we still have some distance to go. I am absolutely certain that we will make important improvements as quickly as we can. To do so is our clear responsibility, and we are all committed to discharging that responsibility.

These hearings, I think, as well as continued counsel with the GAO, will provide me personally and the FEA with new information and guidance, which to all of us is helpful in achieving the results we want. Mr. Chairman, I would just add, as a policy position, the FEA will enforce to the best of its capability any laws and regulations that are on its books, so long as they are there. Our compliance effort will not be designed in a way that might presume the elimination of those laws or regulations within the near term. Second, that we will, wherever criminal violations are found, assure that those are referred to Justice, even if our administrative activities have to take a back seat. As you know, that has been an area of some discussion in the months past.

Finally, it is clear that we are a temporary agency. It is equally clear, however, that we have got to complete this compliance activity, which, it seems to me, means we have to build the organization necessary to do the job. If our agency does expire on time, or any time it does, that institution should remain in place, perhaps within some other organization, to complete the work we have begun. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much. We will include your complete statement in its entirety in the record.

FEA POLICY ON HANDLING CRIMINAL CASES NOT FOLLOWED

On the question of FEA's enforcement policy, a memorandum dated April 28, 1975, from an auditor in FEA region I to the regional counsel refers to a case where the auditor discovered extensive erasures in the records of a company cited for violation. In the memorandum, the auditor asked whether the violation should be pursued as a criminal case. The regional counsel responded on May 14, stating, and I quote:

> It is Agency policy and a matter of practical expedience that all reasonable avenues for effecting the objectives of FEA regulations through civil compromise

at the Agency level should be exhausted before referral to the appropriate U.S. Attorney for criminal or other judicial proceedings.

[See appendix for text of full memorandum.]

Is this FEA policy?

Mr. ZARB. I will ask our Deputy General Counsel to answer that.

Mr. ROBINSON. That particular case was referred to the assistant U.S. attorney in New Hampshire for an advisory opinion as to whether or not the Department of Justice would be interested in handling that case. I believe we're talking about the same case. On the question of the policy that was expressed in that memorandum, that is inconsistent with policy that has been established at the national office.

Senator KENNEDY. If a regional counsel responds in that way, how are they going to understand what national policy is?

Mr. ROBINSON. That particular regional counsel had been given the policy of the agency, which is that, at the point in time when criminal activity is uncovered the investigation is to cease. The facts are to be put together in a referral memorandum that is to be sent to the General Counsel's office in Washington for evaluation and referral to the Department of Justice.

Mr. ZARB. I want to answer that, Mr. Chairman, so the answer is complete. Probably around March or April of this year, it was brought to my attention there were occasions where the FEA, in uncovering various forms of violations when they had been well into administrative proceedings, had asked—or in some form or another requested—that they go forth with their administrative procedures, to do that before the referrals to Justice were made. That came to light in one case between Customs and FEA. It went back prior to my visiting the agency. I discussed the matter with both the Deputy Secretary of the Treasury responsible for their end of the business, and also with the Justice Department. At that time—the timing was about April or May—I suggested that the Deputy Attorney General at that point convene a meeting of the various agencies involved, and ensure that whenever a question was raised with respect to which goes first—the administrative or the criminal proceeding—that the Justice Department had the last call.

Simultaneously, I did direct within our agency that, whenever a criminal case was uncovered, or a suspicion was uncovered, it was immediately to be referred to Justice, and we were to stand back and complete our administrative activities after that was done. You are never going to be able to account for every individual or memorandum in our organization. One decision, or one person or another, it may be an act inconsistent with our policy. But I think your staff has clearly seen what our policy is, and it has been stated clearly and loudly.

Senator KENNEDY. This was as of May 14, 1975, just about 5 weeks ago. Do you have any other kind of document or memorandum that you have sent out to the regional offices, so they will understand quite clearly what you have stated here as your policy?

Mr. SMITH. Yes, sir. It's been incorporated into a number of the pieces of guidance. For example, it was pointed out explicitly in the training materials associated with the basic auditor's course. It's incorporated in the utilities manuals and a number of other places. Mr. Robinson can elaborate.

Mr. ROBINSON. In April of this year, we prepared and submitted to various committees of Congress a report which stated FEA's policy in this area. This report was distributed to all regions, and I believe just this morning I saw some documentation on that, in I believe, the case you were referring to. Attached to the file in that case was an indication that this regional counsel did, in fact, have that report, and underlined various portions of it. We are rather at a disadvantage here, because we don't have these documents in front of us.

Senator KENNEDY. You can submit them, but the point is, as of at least 5 weeks ago—this is a Massachusetts case in any event, not a New Hampshire case—in the regional office the counsel does not understand that to be the case. I think it shows something about the lack of communication.

Mr. ZARB. I just asked Mr. Montgomery if he can conceive of any misunderstanding that was in the regional general counsel at this moment in time with respect to the policy, and he answered that he can submit three specific places, as far as the compliance program is concerned: the draft compliance manual issued in June 1974 that you referred to earlier outlined specific procedures to follow when evidence for criminal activity is uncovered; chapter 800, fraud awareness, in the auditor's/investigator's handbook issued in March 1975, and used in all the basic audit investigation courses, deals with this; and a specific section in the utilities investigation guide outlines the same agency policies. Agency policy has been communicated in writing to the regions on a number of occasions.

REGION ACTED IN CONTRAVENTION OF NATIONAL POLICY

Senator KENNEDY. As I understand it, there was also a situation in region VI in which procedures were not followed after a violation was discovered. These procedures concerned the handling of cases involving possible criminal violations. A memorandum dated April 21, 1975, from Mr. Garringer, the Director of the Enforcement Policy and Program Review staff, describes the confusion concerning the way to handle a certain case; we are not going to mention the company. The memorandum reflects on the way that the procedures were not being followed within the agency. It states, and I quote: "This is another example of region VI going its own way."

[See appendix for text of full memorandum.]

Are you familiar with that?

Mr. SMITH. Yes, sir, I am. That same memorandum reflects the explicit conclusion that the action taken in the region is in contravention to the national policy that has been communicated a number of times, and the individual who took it knew it was.

Senator KENNEDY. The point is that you have two regions which apparently do not understand what the policy is. Or, if they do understand it, they are not following it.

Mr. SMITH. Mr. Chairman, I think there is a distinction between "understanding" what the policy is, and choosing to follow it.

I think there is evidence in this memorandum itself, to the effect that the regional official involved understood the policy and elected not to comply with it. In that connection, as you are aware from Mr.

Zarb's prepared statement, this has been an issue for as long as there has been a national and regional compliance program, since June 1974.

There is a long history of this issue of regional versus national authority and responsibility. And the differing views, within the agency, on what the proper balance was: the question of who does what in a regional operation, and in a national headquarters operation—has always been one, and is, within any organization that has a field staff, as Mr. Zarb's testimony points out.

This issue has been resolved with the preparation and implementation of the regional operations plan which does two important things in this respect.

First, it delineates authorities and responsibilities and pieces of work that are going to be done in the region, and at the national headquarters, for the first time comprehensively and specifically. It reduces markedly the chance of misunderstanding to who is driving what part of the train between national and regional.

Secondly, it provides a specific written delegation of authority from Mr. Zarb to me, from me to the regional administrator, and from me to my subordinates; and, from the General Counsel to the regional counsel; which outlines in writing, for the first time, exactly who has what authority and what action is to be taken.

The promulgation of this plan, Mr. Chairman, is going to reduce substantially the number of instances of the kind that happened in that memorandum. No plan and no management structure conceived by man is ever going to ensure that every single individual in the agency does every single thing in accordance with the agency's policy.

Senator KENNEDY. To move on, in this memorandum, it does indicate—and I will put it all in the record—that "The field complains that we have not issued definitive instructions in many areas. This may be true; but in this case, it did not matter."

That is a reaction, whether we like it or not, from people in the field who have indicated that they have not received definitive instructions. That is what they have said in the field.

You also have the other region that did not understand what you have stated to be an ongoing and continuing policy. There are two issues. One involves the violation of clear guidelines, which we understand may take place in any organization. The other is the fact that the guidelines and regulations have not been issued, or they are confusing, or they are subject to a variety of different interpretations.

Mr. ZARB. I would just add to your concern in this area that in my travels in the country from time to time, where I can, I visited with regional people.

Some of the messages in the last 30 or 60 days have come clear through to me. There are legal interpretations that have still not been clarified by headquarters, so that people in the field will have a clearer understanding of the meaning of some of the regulations and some of the laws which they enforce.

We have a list of those that are still pending. At the moment, they are being clarified in the home office, and I will be getting a continuing report as to how fast they come out of our General Counsel's office. So the people in the field are not left without guidance.

GENERAL COUNSEL HAS NOT RESPONDED TO REQUESTS FOR AID

Senator KENNEDY. With regard to issues that are pending in FEA's General Counsel office, there is quite a list of things that are still pending there, and have been for some months.

In a memorandum dated October 7, 1974, Eugene Guziewicz in the National Compliance and Enforcement Office wrote regarding the General Counsel, and I quote:

> Several requests have been made by RARP [refinery] audit teams of the General Counsel, Washington, D.C., for technical aid in the resolution of a problem. . . . Replies to these requests have not only been slow, but in some cases nonexistent.

[See appendix for text of full memorandum.]

Has this situation changed since October 1974?

Mr. ZARB. The General Counsel will speak first, and then I will speak to the point.

Mr. MONTGOMERY. Mr. Chairman, the answer to your question in a word, is yes, the situation has changed. The explanation for the problem that did exist for some time is not very difficult to articulate.

We were inundated with requests for interpretations. We had them from the regions; we had them from private firms; we had them from the National Compliance Office; and we are the first to admit that for many, many months we did not have enough people to keep up with the number of requests that came in.

Obviously each person who sent us a request was mainly interested in his request. But, if you add them up, you get hundreds and hundreds of requests, which we have handled as fast and as expeditiously as we could.

Naturally, in many cases, we had to set aside for further deliberation and action, not only from my office but also involving inputs and advice from throughout FEA. Some of them, the more difficult questions, we tried to respond oftentimes, if we could, by telephone.

To the ones we could deal with on a short turnaround basis, we have done a number of things to try to clean up this backlog. I think, at this point, the number of actions we have pending from the regions is down to about 12 or 15.

But we have had, from the very beginning, a very great sensitivity to the fact that the regions were important parts of the organization and we should deal with them.

Back in the spring of last year, I set up in my office a unit specifically charged with the responsibility for talking on the telephone, region by region, every day. One man on my staff was assigned the responsibility for one or two regions. Every day he talked to the regional counsel out there.

They knew if they had a problem that needed attention, they could get an answer. Someone would, if he could not answer it himself, try to run it down. In this way, we took care of hundreds and hundreds of problems, on a day-to-day basis.

And we continue to have a more sophisticated system of that kind, now. But it remains true that a lot of things could not be answered, and they did pile up. And, in some cases, the delays were inexcusably long.

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Senator KENNEDY. Are you familiar with the memorandum of May 27, 1975, from Thomas Noel, the Acting Assistant Administrator for Management and Administration, to Robert Montgomery? It requests Mr. Montgomery's assistance in expediting several directives for publication. It contains a personal note on the bottom: "Bob. Some of these started out last year." The notations indicate, for example, that the directive concerning the Project Review Board for Proposed Contracts was "cleared by all officials with the exception of the General Counsel" and has been pending since January 1975. The personnel security program was also "cleared by all officials with the exception of the General Counsel," and was due to be returned last November. Similarly, the inspections and audits manual was "cleared by all officials with the exception of the General Counsel," and was pending since January.

[See appendix for text of full memorandum.]

The memorandum indicates that these directives have remained in the General Counsel's office awaiting action for 4 to 6 months.

Mr. MONTGOMERY. Mr. Chairman, you are accurate in saying that some of these things did remain unclear for those times, but the implication that they were just sitting there is untrue.

In clearing up something, my view of our responsibilities is to ensure that it is properly and legally and in every other way correct. On many of these things, the time elapsed between the time we got it for clearance and the time that it was approved was filled with numerous meetings and discussions and revisions and redraftings.

So, one man's bottleneck is another man's quality control. Some cases, we let things sit aside for too long. In some cases, we used the time to good advantage and made substantial improvements.

Mr. ZARB. I think, Mr. Chairman it might be recognized——

Senator KENNEDY. Just let me make a comment.

Being able to use the phone to let these people know is obviously of some advantage, but that does not help industry or consumers to understand what the rules and regulations really are. How are they going to conform to them?

I think it makes it extremely difficult for them to understand what the thinking is and what is going on in the General Counsel's office. It puts them at a disadvantage.

Mr. MONTGOMERY. It would, if we were talking about problems that were being brought to our attention by the general public.

When I answered your question, I was focusing on the question of our responsiveness to regions who had specific problems on their desk and they wanted to move those problems. What we gave them was our interpretation.

They then incorporated that interpretation into an action which at least became public to the individuals concerned. And maybe it became public generally.

When we have problems involving general questions of interpretation—and we have had many—we do not deal with them through a telephone call, or even a written interpretation of concern only to a specific party. We deal with it by way of a ruling of general applicability which has been published in the Federal Register and given broad circulation. Or we deal with it through a change in the regulations, which tends to be more specific.

The numbers of these are up in the hundreds.

Mr. ZARB. Mr. Chairman?

Senator KENNEDY. Is there anything you would like to add to that? I would like to get into another area.

Mr. ZARB. I would think, as a matter of fairness and balance, the Chairman would want me to add the fact that these memorandums were developed by Mr. Noel, who is newly appointed to the job which he is acting in, and his confirmation is pending before the Senate, which should indicate the direction in which the agency is traveling in terms of servicing these kinds of problems that still prevail within the organization so that they might be cured. If we are not doing our job in the case of the problems that we have had over the last year, these memorandums would not be in existence.

NATIONAL OFFICE INTERFERENCE IN FIELD OPERATIONS

Senator KENNEDY. A meeting of the regional compliance and enforcement directors was held in Atlanta last month. The report of that meeting lists 16 problems cited by the compliance and enforcement directors, some of which we have already talked about this morning.

One of the problems concerns the regional directors' feelings of national office interference in field operations. With regard to notifying appropriate regional offices, the report says, and I quote:

> National office interference in field operations without notifying appropriate Regional Officials. Lobbyists, attorneys, and company officials have contacted high officials in FEA national office, discussed cases and obtained decisions based on incomplete facts that have rendered useless hundreds of hours of investigation. Frequently, the field office learns of this from the company as the national office officials have not informed us.

[See appendix for full text of memorandum.]

How widespread is that?

Mr. SMITH. I think the fact that it exists at all means it is too widespread, Senator. It is another example of the kind of problems that have grown out of the absence of any definitive understanding of the relative responsibilities of the regional and national office.

Given the initial lack of organization, the initial lack of clear definition of the responsibilities of authority among the regional and national offices, there grew up one tendency to which the subcommittee staff alluded and that is the lack of uniformity in the application of regulations among regions.

The first reaction to that was to try to centralize more and more of the decisionmaking to see that the same decision was applied and was made in the same set of circumstances. Unfortunately, that created a tendency to slow down the rate at which cases could be processed and created this opportunity for the intervention of national people in the operational aspects of the regions.

My own view and that of Mr. Zarb and the one incorporated in the regional operation plan is that there is plenty of work to be done from both the regional and the national offices, and this plan has set out the division of that work among the two.

As a result of this plan, and my own instructions to the compliance staff, we will have a lot less of the kind of thing outlined in that memorandum.

It has happened, and it is regrettable; it should not happen, and it will happen much less frequently in the future.

LOGGING PROVISIONS OF FEA

Senator KENNEDY. Does FEA have logging provisions to indicate when lobbyists or attorneys from a company come in, as well as who they visit and what matter was discovered?

Mr. SMITH. Yes, sir, I and each of my immediate subordinates keep a detailed calendar of all the people we talk to outside the agency and, in fact, those are forwarded to the Public Affairs Office and made public on a periodic basis.

Senator KENNEDY. What sort of procedures do you follow when a company wants to discuss a violation it may have committed? Does the company talk to the field people first? Do you have any kind of procedures?

Mr. SMITH. No, sir, we have no specific requirement that anyone follow any particular path to come to see us. We are open to anyone and try to make ourselves available to the extent we can to anyone who has a problem to present. The procedure that I would like to have followed, and I've instructed to be followed is that no decision or commitment be made at any meetings. I try very hard in my own meetings not to make any commitment about what we're going to do, but rather to listen to what the problem is, outline the considerations, and then promise a response or decision in a reasonably short time. Before that decision is made, the people in the field concerned with that case certainly should be consulted and their input should be incorporated into any final decision.

To the extent that that hasn't happened, it's just a breakdown in the way that things ought to happen. This will occur less frequently. It might be appropriate to observe, Mr. Chairman, that a substantial number of those visits are arranged in response to requests from Members of Congress, who are understandably concerned that their constituents have a chance to achieve a hearing on a particular issue.

Senator KENNEDY. One suggestion is that they should not have the field people——

Mr. SMITH. None whatsoever, quite the opposite. What I'm pointing out is that we try to make ourselves available, not only to people who are referred to us by their Representatives or Senators, but also to anybody else who has a problem, to the extent we can. I don't think there's anything wrong with that, Senator. The problem outlined in that memorandum of the Atlanta meeting is valid, and it's one where the field people are right to the extent that it has happened. It should not happen that way. If the field people are going to be overruled, they should be heard, and the reason they are going to be overruled should be explained to them. They should not hear the results from the companies. That's just not the way it ought to operate.

Senator KENNEDY. The point is, this is another area where the field people evidently do not have that kind of an understanding or awareness, at least at this time.

Mr. SMITH. I think it's important to keep that comment in perspective. The comment refers to the fact that this has happened on occasion. I don't want the impression to get in the record that this is the standard way we do business, just call on a company at national headquarters and cut a deal with them, and then tell the field operations people to forget it.

These are, in my judgment, isolated examples and not the standard way the agency operates.

Senator KENNEDY. I would point out that the regional compliance and enforcement directors' report states, and I quote, "Frequently, the field office learns of this from the company as the National Office officials have not informed us."

Mr. SMITH. Maybe they're not any more precise in their memorandums than I have been in one or two of mine, sir.

Senator KENNEDY. I mean it is just another example of confusion.

Mr. SMITH. Anytime is too frequently, Senator, that we agree to.

"POLICY FORMULATION" AT FEA NATIONAL OFFICE

Senator KENNEDY. Let me ask you, Mr. Smith, about your March 4, 1975, memorandum, which is a model of candor, I suppose. You state that the "policy formulation——

Mr. SMITH. I have heard it described otherwise in the last couple of days.

Senator KENNEDY. Under "policy formulation," you state, "virtually none. I have been so busy in the other areas that I haven't even bothered to start on this one yet; I considered it lowest priority."

[See appendix for text of full memorandum.]

Mr. SMITH. Yes, sir, I would like to refer to the first paragraph in the memorandum, paragraph 1E, where it sets out the five things that are incorporated in our job. Paragraph C, "formulates proposed changes to existing regulations to assure attainment of FEA objectives"; then subparagraph 1E says, "participate in formulation of FEA policy, particularly policy likely to have regulatory implications."

Then, the paragraph 2E policy formulation, to which you refer, is clearly in the context of the memorandum keyed to paragraph 1E. The report of this by my good friend Mr. O'Toole in the Washington Post this morning is entirely incorrect if the memorandum is taken in context. Since I list in paragraph 1C, a major function of our work, formulation of regulations, and then discuss in paragraph 2C some of the perceived deficiencies in the regulatory development process, I think it's simply a gross misapprehension to conclude from this that I have been too busy to participate in the formulation of pricing policy. That's what regulatory development is all about; the formulation of allocation and pricing policy.

This statement was an entirely accurate one, and that said, and I had so much to do trying to get my own work done, that I had not had the opportunity to devote a lot of time to putting my input into OCS leasing policy our position on the strip mining bill, and a lot of other things that are important in FEA's total mission, but that are ancillary to my operation of the regulatory program. The charge that I have been too busy to worry about formulating pricing policy is a bum rap. I'll get you plenty of evidence from my friends in the General Counsel that we've had a great deal of input.

Senator KENNEDY. I am glad to hear your comment. You made a strong defense of a weak case.

[General laughter.]

DEREGULATION HAS BEEN THE WATCHWORD

Senator KENNEDY. On page 3, paragraph 3D of that memorandum, you state, and I quote: "'Deregulation' has been the watchword, so why bother getting ready to regulate as well as possible?" Has deregulation been the watchword?

Mr. SMITH. With the Emergency Petroleum Allocation Act, the answer to your question is, yes, sir, deregulation has been the watchword in the sense that it has been the objective and remains the objective. It was an objective established by the Congress when it put a specific time limit on the Emergency Petroleum Allocation Act. The entire context of the act, itself, the legislative history of it, and the language of it indicates that it is a temporary program designed to cope with the emergency occasioned by the embargo from the Arab component of OPEC. The struggling claims on resources has made it difficult, before Mr. Zarb got there to establish that this program should have a higher priority than some other program which was deemed to be associated with a more permanent agency mission.

The sentence is phrased to say that the argument I have run into when I go looking for data support and the specific paragraph that refers to it is, "I need a computer program for my compliance efforts." Somebody else needs a computer program for something else going on in the agency that has a great deal of push to it; for example, the analysis of the economic effects of the President's energy program; and when those two have come up to the trough and there's not enough in there for both of them, mine has not always been at that time the first one in there.

I think, Senator, that it would be misleading to take that one sentence, referring to the issue of who goes first in the line for computer services, and translate that into an interpretation of the agency's position with respect to this program.

Mr. Zarb has pointed out in his statement that the day he got there, or shortly thereafter, he asked for a briefing on the program, and, believe me, having been the recipient of a substantial number of very unambiguous directives from him about what he expected out of this program, there was no question in his mind or mine as to the commitment. The whole purpose of this memorandum was to inform Mr. Hill, who was coming on board as deputy, and who was going to have responsibility for this area, of some of the problems that I was dealing with and some of the recommended solutions. At this point, this was a problem, and I later went on to what I thought the recommended solutions should be.

EXPECTATION OF CONGRESS: FEA WILL VIGOROUSLY PROSECUTE VIOLATIONS

Senator KENNEDY. I understand your view about it. The fact of the matter is, Congress has not decided to follow it, and we have every right to expect that up to the time that the agency expires, there is going to be vigorous prosecution of the violations.

Mr. SMITH. No question about it, sir. Mr. Zarb is committed to that, and so am I. The fact that I wrote this memorandum identifying some problems and suggesting some solutions to the guy who was going to be my boss and was going to have the authority to crack

some of the roadblocks I did not have, is evidence of my commitment. Mr. Zarb has pointed out to me only recently that I did not do what I should have done in that I did not bring to his attention soon enough some of the obstacles I was encountering in the discharge of this exercise, and you may be sure that, although that happened once, it's not going to happen again. And, also, those I did bring to his attention—and there were some—never failed to get his support in terms of whatever was required. It might not have been exactly the way I wanted it, but he got the problem solved whenever I took it to him.

Senator KENNEDY. Let me ask Mr. Zarb if he can give us some idea of when the following would be completed: the adoption of specific policies, guidelines, and procedures in such areas as penalties, compromises on penalties, and the handling of complaints by the public. When will you have some guidelines and procedures in these areas?

Mr. ZARB. Are you looking at my testimony, Senator? That portion of my testimony that addresses that question, is that what you are looking at?

Senator KENNEDY. We had indicated we did not find any guidelines or procedures in these areas, and I am just wondering if you will give us some idea as to when you will have them.

Mr. ZARB. We have a manual which will be ready within the next 30 to 45 days which will cover this area; but I'm not sure your question is being answered, Senator. You are talking about procedures specifically related to how violations are to be treated?

Mr. SMITH. These are already incorporated in the regulations, now.

Senator KENNEDY. In response to one of the questions I raised in my letter to Mr. Zarb of April 23, 1975, your answer to question 9 states, "FEA's policy regarding penalties is still being developed and no comprehensive directives have been issued." I am just wondering when you are going to develop a policy and issue guidelines in this important area.

[The letter and response referred to above appear in the appendix.]

Mr. SMITH. Senator, that speaks to the policy of how to compute the amount of penalties. In the case of a particular violation, the policy on penalties is the one outlined in Mr. Zarb's statement and in a number of instructions issued to the compliance staff; and that is that penalties will be assessed or recommended in those cases where violations of the regulations evidenced any intent to evade the regulations.

Mr. ZARB. I want to be sure we are answering your specific question, Senator. I get the feeling that we are on the margin.

FEA THOUGHT GUIDELINES IN SOME AREAS WERE NOT NECESSARY

Senator KENNEDY. In response to a number of these questions, FEA indicated that there were no guidelines that had been developed. I am trying to get on the record at least some goal for a time frame in which these guidelines would be developed and issued.

Mr. ROBINSON. Senator, in some of these areas, we thought guidelines were not necessary. For example, the one we talked about a few moments ago concerning the regional counsel in Boston, I would have thought those guidelines were not necessary. But you have pointed out by that particular example that guidelines are necessary; so, in that particular area, and the same with the area of penalties, the guidelines

should be issued. We had no previous plans to do so, but I think they should be as a result of what we heard this morning.

Senator KENNEDY. We would be interested in getting some time frame on these things.

Mr. ZARB. For the record, Mr. Chairman, we will provide a specific answer for whatever questions you have. One of the issues I addressed in my testimony is the current consideration of allowing to stand in the public domain for some period of time these agreed to settlements that sometimes occur between FEA and the violator. At the current time these decisions or agreements are made public after the agreement has been accomplished.

One thing I am considering right now is the possibility that once they have been agreed to but before they become finalized they rest in the public domain for 30 days for public comment, before the finalization.

Senator KENNEDY. We will get those from you and make them a part of the record.

[The information referred to appears in the appendix.]

Senator KENNEDY. I would also like to know when you believe there is going to be a sufficient number of auditors for audits of the major refineries, including the natural gas plants. I would like to get some idea as to when you will have sufficient manpower in this area. There are probably two or three other specific things that you could give us for the record as well.

I want to thank you very much. You have brought up FEA's proposed regional operations plan, which I believe touches on a couple of the areas we have discussed. Your people can refer to this plan in terms of identifying any areas we have been talking about. I think we are moving in a direction which will make some sense.

Mr. Zarb, I am sure that you are well aware of how extremely important these issues are to the oil companies—the big ones as well as little ones—and to the consumer. I think we have a heavy responsibility in the Congress to insist that the rules, regulations and procedures which are administered by FEA are clear and concise and understandable. I think that industry has every right to expect this, and I think we have a responsibility to ensure that it is done, and that there is not the kind of confusion or ambivalence or lack of specificity which I think has in the past often been the case.

I know you have recognized this and attempted to try and cope and deal with it.

I think the second factor is, of course, the implications of these issues for the consumer. I come from a part of the country which I know you are very familiar with, and I think it is not unusual for many other sections of the country where the cost of energy has just gone right up through the ceiling. The Congress has been quite specific on this point as to what it wanted in terms of the cost of various energy products, and has established legislative provisions for an enforcement program. We have every right to expect that FEA is going to protect the American consumer and not permit any kind of violations of the law. I know that is your intention.

We recognize that there are always birth pains in setting up any new agency. But we expect a vigorous enforcement of this legislation, and we also expect that you will be fair and uniform in the applica-

tion of the legislation, and that there will be clear and fair enforcement.

I think this is really what we are interested in accomplishing. Of course, you cannot be blamed for much of FEA's past record, since you have assumed your responsibilities at the agency in more recent times. But I believe the record in the past has justified the kind of review that we have been making here this morning and which we will continue to make. We want to work with you in trying to make sure that your job is going to be an easier one, and that the public interest in going to be served.

Mr. ZARB. Thank you, Mr. Chairman.

Senator KENNEDY. Thank you very much.

[The prepared statement of Frank Zarb follows:]

PREPARED STATEMENT OF FRANK G. ZARB

I welcome the opportunity to appear before this subcommittee to discuss FEA's compliance program. It is appropriate that the subcommittee has chosen the compliance program as the focal point for these hearings because effective and vigorous enforcement is the foundation of a successful regulatory program. Compliance with any regulatory program relies heavily on cooperation and obedience by the industry subject to those regulations. For the most part, citizens are willing to obey the law even when compliance involves enormous financial sacrifice (as it does in the FEA context), but only if they know that the Government also requires everyone else to comply.

Mr. Chairman, in our conversations over the past few weeks, you have convinced me, and I hope I have convinced you, that we are both committed to the vigorous enforcement of FEA regulations. I think we are also both seriously concerned as to whether the FEA's current compliance program is adequate for the task. You and the members of this subcommittee's staff are to be complimented on an unusually thorough inquiry into this subject. While to our knowledge the inquiry has largely discovered those problems with which we are already familiar, nevertheless, your inquiry has already been productive because you and your staff have given us, in the numerous discussions we have had over the past several weeks, a fresh perspective on FEA's problems in the compliance area that will be helpful to us in solving them.

Rather than giving you here a detailed summary of what we have already done in the compliance area, most of which has already been provided to the subcommittee staff, I think it would be more productive this morning if I focused specifically on the various issues and problem areas identified by your staff as being of particular interest to the subcommittee. I will discuss the problems we have encountered in each of these broad areas, and describe the steps we have taken or are taking to deal with them.

After my statement, I would be happy to respond to your questions. I have brought with me Mr. Robert Montgomery, our General Counsel, and Mr. Gorman Smith, the Assistant Administrator for regulatory programs, and knowledgable members of their respective staffs to assist me in answering your inquiries.

MANPOWER AND BUDGET FOR NATIONAL AND REGIONAL COMPLIANCE PROGRAMS

The question of the appropriate resource level for compliance activities has been and remains an especially difficult one. Clearly, we most have a level of resources adequate to support a vigorous and effective compliance program. At the same time, we have a responsibility to see that the resources we do have are employed as efficiently as possible.

I will not review in detail the history of our compliance staffing. The specifics have been provided to the subcommittee staff. I do believe it is important to understand the principal milestones in the program's development because our present situation stems from them.

First, we must remember the conditions under which the Agency was created. It was pulled together overnight by combining numerous segments of other Government offices, adding large number of detailees from other departments and agencies, and hiring a number of new employees. It confronted a entirely

new problem with which none of us had any direct experience. Most of the people involved had little direct knowledge of the industry's complexity. We were in a true emergency situation, with a premium on decisive action.

Given the difficult nature of the problem confronting the Agency and the trying circumstances always associated with the creation of a new organization under emergency conditions, the Agency has really done a remarkably good job of discharging its congressional mandate. It met the challenge confronting it and brought us through a trying and dangerous period with minimum disruption of our economy and our society.

There were, of course, mistakes made in this period. In retrospect, it is clear that we probably should have done some things differently although I might add that it was much less clear at the time the hard decisions had to be made. We have learned from these mistakes. Many of them have already been corrected, and others are now being corrected. As we have gained experience, we have learned how to do our job better, and we will continue to improve our performance.

While we welcome and indeed encourage constructive criticism and suggestions for improving our programs, we do believe it important to evaluate those criticisms in light of the Agency's overall performance of an extraordinarily difficult task under trying circumstances.

One of the most trying of those circumstances still impacts on the program's effectiveness today. From the outset, FEA's entire regulatory activity, to include compliance, has been conceived as only a temporary program. At first, it was due to expire on February 28, 1975, only 14 months after it began. Now, it is due to expire on August 31, 1975, still only 20 months after it began. This has made it difficult to plan for and execute an adequate staffing program. It has been hard to plan future requirements and to attract fully qualified and dedicated people to an agency that offered very limited job security. We were able to staff most of our positions initially with employees from other agencies, principally the IRS, but they hold reemployment rights which some of them exercised either because they thought they saw the first sign of the program's demise, or simply for personal reasons. Accordingly, the program has experienced unusually high turnover.

Nevertheless, despite these obstacles, by the summer of 1974 we had been able to assemble a total field compliance staff of approximately 850 employees. This is roughly 25 percent of the agency's entire staff and is by far the largest single program in the agency. One of the issues before this subcommittee, however, is whether that program is big enough.

When I came to FEA last December, one of my first actions was to ask for a briefing on our compliance program. At that time, I was informed of the redeployment of people and change in program emphasis that was underway in response to the agency's own evaluation of its program, undertaken when FEA assumed responsibility for the programs from the Internal Revenue Service in June 1974, and a draft General Accounting Office report issued in September 1974. I was also told that the authorized staffing for the regional compliance program was scheduled to be reduced from a December 31, 1974, level of 784 to a June 30, 1975, level of 711. I immediately directed that this planned reduction be canceled, that the staffing level be maintained at no less than 784, and that a total of 20 new attorneys and appropriate clerical staff be added at the national and regional levels to increase our legal input into these cases.

I also questioned whether this was enough to do a thorough job of enforcing our regulations and was convinced that it was not possible to make a firm judgment on that issue until a number of measures that were then underway to improve productivity and efficiency had been tested. I directed that those measures be expedited and that I be informed as soon as we could make a judgment on the adequacy of this staffing level.

The followup report to me makes clear that we underestimated the size and complexity of the compliance task as our program emphasis shifted away from the retail sector toward crude producers, additional effort on refiners, and more emphasis on wholesalers. In particular, our special program to audit suppliers of utilities turned out to be considerably more complex than we had anticipated.

Accordingly, I have recently directed that an initial increment of 50 additional personnel be hired for the utilities program by July 1, 1975. These positions were advertised in accordance with Civil Service regulations on June 10; and action is under way to bring these people on board.

Concurrently, I directed the development of a staffing plan and request for a supplemental appropriation to augment the request for this program submitted

in the President's fiscal year 1976 budget. This plan is now nearing completion. It is expected that I will be asking the Congress for additional funds to support this effort.

I also requested the General Accounting Office to review our utility supplier effort in the context of the total compliance workload and give me its views on the most effective use of our resources. Last Friday, they informed me that in their opinion they did not see a need for a discrete utilities project and that sales to utilities should be tracked as part of our general refinery or wholesaler audits. They further recommended that no additional staff be assigned to the utilities project and that we begin a gradual phaseout of the current program.

I discussed this recommendation at length with the GAO staff, and I think we reached agreement that overcharges to utilities during the embargo could not be ignored and that it was in this area where many questionable and perhaps criminal activities could have taken place. Thus, while the GAO gave us some very useful suggestions and information, I remain more convinced than ever that the FEA needs to expand its efforts in the utilities project temporarily in order to assure the American people that the high electricity rates they are paying are at least no longer the result of unlawful pricing of fuel oil.

The GAO team also gave us some useful insights into other aspects of our compliance operations. They pointed to areas where we could improve communication among our working level people in different regions as a way to speed up the processing of cases involving two or more regions. They also suggested that we needed more definitive guidance to the regions on selection of targets for audit, the scope of the audit effort, and the time period covered by the audit. Their suggestions will be helpful in our subsequent decisions in this area. In fact, I have asked for the GAO to give us even more help on the question of targeting of audit effort and other aspects of the program so that we can benefit from their own unique background and experience in this eara. We look forward to a continuing relationship with them as we upgrade this program.

Finally, I should point out that we are no longer staffing for a temporary, short term compliance program. As the President's proposal for decontrol of old oil is adopted, at least some of the existing regulatory authority will be extended for 2 years or more. Accordingly, we are now for the first time planning to continue our compliance effort beyond the time that our current regulatory authority expires until we have completed a comprehensive audit of regulated industry pricing practices, particularly during the period of the embargo. I view this as necessary both to assure the public that it was not paying unlawful prices for products during the period the regulations were operative and to assure the majority of firms that have complied voluntarily with our regulations that all others have been made to comply as well.

We realize that we are going to have to operate with a finite level of resources. Realistically, that level may not permit us to do everything we would like to do as fast as we would like to do it. It is our responsibility to determine the level of resources required for an adequate program and assure that those resouces are used in the most efficient manner so as to get the maximum returns from them. Then we must analyze the nature of the entire compliance task to establish priorities of effort within the overall program.

This is, of course, what the Agency has done in the past, using the information available to it at the time. We know now a great deal more about these issues than we did 3–6 months ago. Accordingly, we are now in the process of using that new knowledge and the new perspective of a program that will continue for some extended period to develop a better plan for how many people we need and how we can use them most effectively. The execution of this plan will be monitored closely and revised as necessary in response to what we learn as our program develops. One problem in the past has been the lack of a clear perception on the part of some regional administrators as to the high priority the compliance effort deserves. This has resulted in several instances of detailing compliance personnel to other agency programs or to locally initiated projects. Directives have been issued that this practice be stopped, and it will not be permitted to recur.

SCOPE, CONDUCT AND ADEQUACY OF AUDITS AND CASE RESOLUTION

Several of he items on the list of subjects that your staff said would be covered by these hearings involve subjects such as whether we had assigned the proper priorities to various aspects of the program, whether there have been unnecessary delays in processing compliance cases, and whether we have adequately kept track of pending cases. In the interest of time and because several of

these areas overlap, I would like to treat these various subjects under the broad headings of management effectiveness as well as resource commitment and level of effort.

Organization and lines of authority.—FEA's short history—it will be 1 year old on the 27th of the month—has been marked by growing pains. Organization has been one of them. The issue of national/regional relationships was brought to my attention in conjunction with the review of the compliance program I asked for in December 1974. There has been considerable debate within the agency itself as to whether, in the interests of proper management and uniformity, there should be greater or lesser autonomy in the region regarding the compliance program. The proper balance between national and regional control will play a large part in improving the compliance program.

In February, an issue paper was prepared and submitted for my consideration setting out a division of responsibilities in the compliance program between the national and regional offices. However, the issue was too norrowly drawn since the same issue of national/regional relationships existed in other FEA program areas and these involved major considerations with long-term implications for the way the agency was going to operate.

Internal controls.—Up until very recently, FEA management processes were accomplished in support of the general guidelines of the management by objectives program. Our management staff was directed more towards the development of organizational structure and management guidelines of the agency than towards critical review and evaluation of the agency's operational programs.

Recognizing the inadequacies of this system, I directed the development of formal operational programs for fiscal year 1976 for both the headquarters and regional offices. These headquarters and regional operation plans (HOP and ROP) outline specific prioritized program goals and objectives, delegated authorities and responsibilities, resource requirements for the accomplishment of the stated objectives, and—more importantly—designed milestones and quantitative performance factors against which program execution can be evaluated.

Biweekly performance reporting will be required from all regional and headquarters offices. In addition to incorporating these data into operational reports for my use, the management staff will provide continuous program evaluation with the authority to recommend a program modification/adjustment, tradeoffs among programs, and the redistribution of available resources, as required.

This staff will deal directly with the operational program offices to improve the execution of the program and the accomplishment of the established goals on a timely and effective basis. This formal program review and evaluation function will be supplemented by periodic management conferences of our program executives to address program accomplishments and problems encountered.

The headquarters and regional operation plans include not only specific delegations of authority, but also a more precise delineation of the roles of the national and regional offices in the treatment of cases. Both these elements should go far toward resolving the questions of national versus regional responsibility and improve the working relationships among the various organizational elements involved in compliance.

Adequacy of guidance from the national office.—While the time required to develop a comprehensive operating plan may have contributed in certain cases to a lack of uniformity among regions, this has not been the only cause of such variability. Rather, regional variability has been an inevitable product of the decentralized way in which the compliance program developed, coupled with the exceptionally heavy demand for guidance from the national office during the program's early months. This demand, and the problems encountered in meeting it, were intensified by the complexity of the regulations, the great haste with which they were originally drafted, and the frequency with which they had to be amended in response to changing market conditions.

We have already made substantial progress in this area. A major element of the compliance action plan, which I approved in January 1975, was the development of better guidance and direction to the regional administrators on the conduct of compliance activities. Because we recognized the immediate needs for such material, it has been issued as developed in a number of separate directives. Since January 1, 1975, there have been 49 items of program guidance issued by the national office, and it is reported to me that these have improved substantially the uniformity among regions—even though we still have a long way to go.

These directives and other necessary material are being incorporated into a comprehensive compliance manual that will codify in one place our procedures,

guidelines, and policies. This manual, which is to be issued soon, will address the entire compliance process and provide detailed guidelines and standards for program development, program operations, case resolution, and administrative activities. The manual will contain detailed background material for orienting compliance personnel to the petroleum industry and the regulatory environment, and will provide a means for insuring that high-quality work is performed within all regions and the national office by specifying uniform policies, procedures, and reporting requirements designed to assure quality control and uniformity.

The manual has already benefited from the work of your staff and the GAO, who have identified certain areas that need additional emphasis. We also intend to consider the findings of these hearings in the development of the final version of the compliance manual. The manual will be kept up to date by the addition of new or replacement issuances and will serve as the standard reference for FEA compliance activities.

Case control and management.—Another significant problem area that has troubled us for some time is that up to now the FEA has not had a fully adequate case control system. After the transition from IRS, we developed a compliance case control and tracking system and initiated it in August 1974. During the few months following the initiation of the system, various problems arose and were solved, and we managed to incorporate a sizeable backlog into the system.

In January 1975, the first of what were intended to be regular reports on regional and national office case activities was extracted from the system. During February, however, in an effort to centralize and improve the efficiency of all agency data functions, the compliance case control system had to be reprogrammed and incorporated into the new, centralized computer system. While this means that we have had to do case management with a manual system, this conversion process is now nearly complete. The new system should provide the necessary capability to trace, monitor, and analyze all compliance case activities.

The overall objective is to develop and implement a system which integrates the case control and tracking, weekly activity reporting, and monthly time reporting systems. From this comprehensive data base, the national compliance office will be able to extract complete and up-to-date information regarding individual cases or types of cases. Statistical and other reports will be produced that will aid management in such areas as manpower planning and evaluating compliance performance.

Delays in processing enforcement actions.—While we are normally more concerned with the correctness of our compliance actions than with processing speed, nevertheless there have been too many unnecessary delays in processing enforcement actions. Several factors have contributed to these delays. One obvious problem is that the regulations have become increasingly complex as a result of continuing efforts to be thorough and fair in our regulatory impact on consumers, producers, refiners, and distributors. These regulations are subject to continuous review, revision, and updating in response to changing economic conditions and new programs. Rapid and definitive interpretation of these regulations has become increasingly difficult, and this impacts upon timely progress in issuing enforcement actions.

Another source of delays has been the normal problems to be expected from the startup of a new agency operating under emergency conditions. New people were assigned to unfamiliar tasks after only limited training so as to get somebody on the job and working. As they dug into the facts in specific companies and tried to apply our regulations to them, a number of difficult issues were identified. The newness of the entire program meant that there was no established body of rulings, case law, and interpretations that characterizes a long-established agency such as the Internal Revenue Service, for example. The only way to assure reasonable uniformity was to centralize the review and approval process. We had to trade time for acceptable quality controls, a problem compounded by the absence of enough specific and detailed guidance to meet all the needs of the people in the field. Accordingly, it has simply taken a long time to resolve some of these issues.

These problems are typical for a new agency gearing up to operate a complex regulatory program. We are, however, taking steps to speed up the process. As I indicated earlier, we have formalized lines of authority, and we are in the process of improving upon our guidance programs and case management system. Moreover, we have contributed substantially to the solution of this problem in the General Counsel's office by creating on March 1, 1975, a separate compliance division that can give full time and attention to resolving legal questions in the compliance context. But, I feel the most significant improvement necessary to

accelerate our turnaround time on enforcement actions at the national level, especially for our refiner and utility supplier cases, will be a new procedure we intend to implement on July 1 for case resolution.

Case resolution will begin when the investigation has been completed and reviewed for adequacy of scope, detail, and documentation. In other words, the investigative function will be viewed as being separate and distinct from the case resolution function.

In the national office, we intend to assign personnel to a separate office of case resolution. This office will have complete responsibility for taking a case from the point where the investigative portion is completed to the final resolution of all remedial enforcement action. Each case will be assigned to a case analyst who will head a team consisting of himself and an attorney from the Office of General Counsel, and they will have direct access to the investigator responsible for the case in the region. They will review the case; decide what, if any, enforcement action is necessary; and approve or modify the appropriate documents and transmit them to the region for implementation. The regional office will monitor the firm's subsequent compliance by conducting followup investigations to the extent necessary.

We feel that by assigning all resolution responsibility in a particular case to a small and identifiable group of employees, this case resolution procedure should result in both an improvement in the processing of compliance cases and in the uniformity and accuracy with which they are handled.

One final point needs to be recognized when treating the issue of delays in case processing: FEA's ability to process an enforcement action quickly is substantially greater than that of most regulatory agencies. Notwithstanding the delays we have experienced and the clear need for the corrective actions we have initiated, we have still been able to resolve the vast majority of our cases in what are very reasonable times for Federal regulatory actions.

Our procedures have been kept informal so as to provide a timely mechanism for enforcing FEA's regulations. But while we need to be expeditious, care must be taken to insure that the due process rights of companies involved in compliance proceedings are not infringed. The FEA has taken several steps recently to assure necessary procedural safeguards. First, in September 1974, it adopted revised procedural regulations that substantially broadened the rights of persons appearing before FEA. Second, by expanding the legal staff involved in compliance proceedings we are assured of adequate legal input into each decision. And, third, we have changed the use of NOPV's from information-gathering devices to formal written notices of charges that are set out in some detail. A specific directive was issued to the regional offices on April 30, 1975, precluding the use of a notice of probable violation (NOPV) until a "significant stage of a factual investigation has been completed * * *" and as other than a formal notice of charges. While these measures may add some time to completion of some cases, we deem them essential to preserve the rights of the parties subject to FEA action.

POLICY, PRACTICE AND PROCEDURE WITH RESPECT TO CHOICE AND PROCESSING OF ENFORCEMENT ACTIONS

One of the subjects listed by your staff as of particular interest was FEA's policy, practice and procedure on the choice and processing of enforcement actions. FEA has authority to issue orders, called remedial orders, which require companies that have violated the regulations to cease their unlawful practices and to make restitution to injured parties. A remedial order is usually preceded by an informal proceeding in which the company is served with a notice of probable violation outlining the charges and is given the opportunity to file written comments and have a conference with the FEA.

To date, the regulations prescribing procedures for FEA compliance actions have not provided an explicit means for finalizing those compliance actions in which a firm may be willing to undertake certain remedial action satisfactory to the FEA with or without conceding that it has, in fact, violated the regulations. In the past, many firms have offered, and the FEA has in many cases agreed to, settlement of a case by making full restitution but without having to concede a violation.

Those settlements have ordinarily been formalized in written agreements, so-called "consent agreements," which the FEA believes are binding on the parties and have the same force and effect as a final order of the Agency.

However, since such written agreements have never been expressly provided for in the procedural regulations, there has been some uncertainty as to the

status of outstanding compliance agreements and considerable inconsistency in the use of voluntary settlements of compliance cases. For example, our own investigations have uncovered instances in which so-called compliance agreements in cases potentially involving millions of dollars have been nothing more than a letter signed by only one party confirming an oral understanding. A particularly glaring example of deficient procedures occurred when a letter from a major oil company's attorney written to confirm the company's understanding of the agreements reached at a meeting with FEA compliance staff members the day before was deemed by the staff to be a compliance agreement. FEA did not even acknowledge the letter. When senior legal and compliance staff members became aware of this situation, a letter was dispatched to the company informing it that FEA did not consider itself bound by the terms of the company attorney's interpretation of the agreement reached at the meeting.

To preclude such misunderstandings in the future, on May 14, 1975, the FEA issued a notice of proposed rulemaking to expressly provide for a consent order procedure similar to that used by the FTC and other regulatory agencies. Comments have been received from the public in response to the notice and it is anticipated that, pending a comprehensive evaluation of those comments, the final consent order regulation will be formalized in the next few weeks.

Among the comments received were suggestions that FEA adopt a procedure analogous to that of other agencies and place proposed consent agreements on the public record for a 30-day period prior to executing them. We are currently considering the adoption of this procedure as a way to assure that all parties affected by the agreement, even indirectly, have an opportunity to represent their interests before the agreement is concluded.

POLICY, PRACTICE AND PROCEDURE WITH RESPECT TO REMEDIES AND PENALTIES

The questions which have been raised regarding FEA's policies, practices and procedures with respect to remedies and penalties has, I think, been largely the result of a general misunderstanding of FEA's actual policies. The FEA's policies can be stated plainly and simply: In every enforcement action the FEA strives: (1) to halt the unlawful practices; (2) to attain full and complete restitution to injured parties; and (3) to extract a penalty, where appropriate, that is commensurate with the seriousness of the violation and will provide a deterrent to others.

Thus, each remedial order or consent agreement issued or entered into by the FEA orders the violator to cease and desist from continuing the same violation, and it also has a provision for a remedy. In a pricing case the remedy is a refund if the victims are identifiable and a rollback, or a reduction in what current selling prices would otherwise be, if victims are not identifiable. In allocation cases involving failure to supply product at some prior period, it is sometimes difficult to fashion a remedy because it seldom is of much use to order a payback of product at a time when most purchasers have more product than they need. In such cases, when a prospective remedy is inappropriate, the FEA makes an effort to obtain a substantial civil penalty instead so as to preclude future allocation violations. In three cases of this kind, the FEA successfully collected $535,000 in civil penalties.

Fashioning a remedy in a pricing case is usually not a simple task except at the retail level. A serious problem in simple refund cases is assuring that the refunds find their way downstream to the persons originally overcharged—usually, but not always, end users. This is particularly a problem because it is unfair to impose upon middlemen the burden and administrative expense of computing and distributing a refund among all of their customers.

One technique we have used is to require any downstream recipient of a refund to treat the amount of the refund as a reduction in his product costs for the month in which it is received. This causes them to set their prices lower than would otherwise have been the case, thereby passing the benefit of the refund on to end users.

The important point is that in case a refund is mandated at any level of the distribution chain, the benefit of that rebate goes to the individual who was overcharged where feasible and to the particular group of customers who were overcharged where it is not feasible to identify amounts of individuals refunds.

For example, when we find a utility supplier price violation and direct a refund, we notify the State ratemaking authority of the amount of the refund going to the utility. Because the utility itself is beyond FEA's jurisdiction, it

is then up to that State body, or to the Federal Power Commission for utilities it regulates, to determine how the refund will be used to benefit the utility's customers.

The fact that most major oil companies have large amounts of banked or unrecovered costs that they can pass through at some future time does not, contrary to what many people think, present a serious problem with regard to remedies. The FEA does not allow a company that has actually overcharged any purchaser to remedy the violation by reducing banked costs by an equivalent amount. Our rule of thumb is that if a company unlawfully took money out of the marketplace, it is required to put that money back into the marketplace. It may be true that in the period immediately after the embargo, when there was some confusion in this area as banks began to accumulate, some remedial orders and compliance agreements improperly allowed companies to offset overcharges during the embargo with adjustments to current banks. But, the FEA has for some time had a steadfast policy against such a practice. That policy has been clearly stated to the FEA regions in ruling 1974–26 and in the guidelines to the reasons issued on the application of ruling 1975–2.

That is not to say that the FEA does not sometimes allow violations to be remedied by bank adjustments. But, that is true only in those cases where the violation itself resulted only in an improper upward adjustment of banked costs.

In addition to its own internal compliance proceedings, the FEA has authority to refer to the Attorney General for criminal prosecution cases involving willful violations and, for the imposition of civil penalties and/or injunctions, other kinds of cases. It is our policy to refer to the Department of Justice all cases involving evidence of willful misconduct and to let the Department determine whether a prosecution is warranted in the circumstances. There should be no misunderstanding on the part of anyone either within or without the Government on this score. Any evidence pointing to criminal activity, to include disregard of or willful intent to evade FEA's regulations, will in every case be forwarded to the Department of Justice for its determination as to disposition. Written instructions have been issued to the compliance staff as to the specific procedures to follow whenever they encounter in the course of an investigation evidence of criminal activity of whatever nature.

The maximum penalty for willful violation of FEA regulations is $5,000 per violation; there is no provision for a jail sentence. A civil violation carries with it a maximum penalty of $2,500 per violation. The FEA has determined that each day of violation constitutes a separate violation for purposes of the penalty provision although it is not clear that that position would be sustained if challenged in court. We have submitted to the Senate Interior Committee, in connection with hearings on the extension of the Emergency Petroleum Allocation Act, the suggestion that the penalty provisions be amended to clarify our authority to treat each day of a continuing violation as a separate violation and to provide for penalties that can be more readily tailored to the seriousness of the violation.

The FEA's authority to refer cases to the Department of Justice for injunctions and penalties is a useful augmentation of the FEA's internal administrative procedures. However, these remedies are time-consuming and expensive to obtain if they have to be litigated in the Federal courts. Therefore, the FEA has generally elected to accept from a violator in noncriminal cases the payment of a civil penalty in lieu of referring the case to the Department of Justice. Over $900,000 in civil penalties has been collected by FEA through such negotiations. The criteria that the FEA applies in determining the amount of civil penalties to collect in a particular case have been outlined in the written materials that have been given to the subcommittee in response to the chairman's April 24 letter.

Heretofore, the case files on completed penalty cases have been available for discovery under the provision of the Freedom of Information Act. Henceforth, we plan to make such case files available in FEA's public document room.

THE USE AND EFFECT OF RULEMAKING IN THE COMPLIANCE CONTEXT

Concern has been expressed that the FEA's regulations have in some instances been inadequate for compliance purposes and that delay in curing the deficiencies may sometimes have influenced the substance of the solution. For example, it has been suggested that delay in solving problems with the regula-

tions has caused overcharges to accumulate to such a degree that the FEA has solved the compliance problem by retroactively making lawful what were previously unlawful practices. FEA's treatment of natural gas liquids (NGL's) has been cited by some as an example of this result. I would like to address that specific example because it helps to point up the complexity of the regulatory problems involved in compliance cases.

There is no question in my mind that it has taken too long for FEA to come to grips with the NGL problem. It was clear that the Cost of Living Council intended that NGL processors would be covered by the Phase IV regulations applicable to refiners, which regulations were later adopted by the FEA. However, those regulations were difficult to apply to NGL processors because they did not expressly deal with physical distinctions between the extraction of propane and butane from natural gas and the refining of those products from crude oil. Moreover, since the Emergency Petroleum Allocation Act nowhere specifically mentions natural gas liquid products, the question has been raised as to whether the FEA has had authority to regulate NGL's after the expiration of the Economic Stabilization Act on April 30, 1974.

The FEA should have recognized and dealt thoroughly with the problem in the spring of 1974 when the problem first came to its attention. However, because of the press of other matters, its direct response was unduly delayed. On May 16, 1974, FEA first addressed this issue in a notice of proposed rulemaking with respect to its allocation regulations and stated that it had authority to allocate natural gas. When the final rules on the allocation of natural gas were adopted on July 2, 1974, FEA's authority over that natural gas liquid product under the EPAA was extensively discussed in the preamble. On July 25, 1974, an interpretation was issued to the effect that products processed from NGL's are considered by the FEA to be subject to the refiners' price rules. That interpretation was affirmed on appeal to the Office of Exceptions and Appeals in November, 1974. Then, on August 5, 1974, FEA issued a special propane emergency price rule which specifically stated rules for the pricing of propane extracted from natural gas. Finally, on September 6, 1974, the FEA again reiterated in a notice of proposed rulemaking that it considered NGL processors to be subject to FEA price regulation. That notice for the first time proposed a separate set of regulations tailored to all NGL's.

It was not until December 24, 1974, shortly after my confirmation by the Senate, that the FEA was able to complete the rulemaking proceedings and adopt a final regulation covering NGL's, effective January 1, 1975.

This new regulation solved the problem prospectively, but it left the question of whether and the extent to which the FEA was going to apply strictly its refiner price rules against NGL processors for the period prior to January 1, 1975. Some regional compliance personnel strongly urged literal application of the refiners' formula. Other FEA personnel, however, believed that such a rigid approach would be unfair, given the fact that the refiners' price rule was not designed with the particular characteristics of NGL processors in mind. Some members of the industry argued for no enforcement at all on the theory that most of them were unaware of the application of FEA regulations. While the FEA believed that the industry had inadequate notice that it was covered by the FEA regulations, it was nevertheless concerned, both from a legal standpoint and on grounds of basic fairness, that strict application of the refiners' rules would mean that NGL processors would be held to rules that, if they had been complied with, would have placed them at a severe competitive disadvantage in relation to competitors that refined the same products from crude oil.

Therefore, on May 29, 1975, the FEA published ruling 1975–6, which construes the refiners' price rules so as to allow NGL processors to treat increased shrinkage costs as increased product costs under the refiners' price rules. Moreover, the FEA has, by notice in the *Federal Register*, proposed a class exception that, if adopted, will allow retroactively the same adjustment of May 15, 1973, selling prices that is allowed by the rules that have been in effect since January 1 and will allow increased nonproduct cost passthroughs of up to one-fourth cent per gallon. In short, the FEA has proposed that for the period prior to January 1, NGL's be regulated on essentially the same terms as they have been after that date.

It has been suggested that the FEA took this action at least in part in order to eliminate a major compliance problem. That is not so. The principal reason for taking this action was to put NGL processors on an equal footing with their refiner competitors. Rigid application of the refiners' rules would have meant that NGL processors would be held to May 15, 1973, selling prices, which in

some cases were as low as 2–4 cents per gallon, while their refiner competitors were allowed to increase their prices to reflect the increased costs of crude oil. Moreover, the FEA had necessarily concluded when it adopted the new rules for NGL processors that the old rules were inequitable and not rational as applied to NGL processors. Therefore, without the steps the FEA has recently taken, the FEA ran the risk of having the courts prevent the FEA from taking any compliance action against NGL processors for the period prior to January 1.

The FEA has only begun its compliance effort in this area. However, despite the lateness and the enormity of the effort required, the FEA intends to audit all significant processors of NGL's for any pricing violations committed prior to January 1, 1975, and to order appropriate refunds where violations are found. This task will be difficult and expensive. It will require assembling and training a substantial number of auditors who will specialize in this area. Moreover, it will require the agency successfully to defend in court the cases currently challenging our NGL regulations and the numerous cases that will arise once enforcement begins. However, we are committed to seeing this matter through.

The NGL problem points up some salient facts about FEA's compliance process. In the first place, it demonstrates the complexity of issues raised frequently in compliance cases as the agency develops the body of interpretive actions required before the rules can be applied to the widely different factual circumstances found in the industry. Second, while it may take us some time to sort out these extremely complex problems, the FEA is determined, once it has reached an equitable solution, to apply that solution retroactively where appropriate and fair rather than letting bygones be bygones.

CONCLUSION

Finally, Mr. Chairman, it is clear that the areas this subcommittee is examing, which really turns on the question of effective management of our compliance effort, is still in the process of being meaningfully improved. Members of our professional staff in the field and at the headquarters have undoubtedly experienced a series of frustrations, delays, or difficulties during the short history of our organization and the evolution of its adjustments:

Unfortunately, there is no way to bring the level of our operations up to desired levels of efficiency and effectiveness in a few days, a few weeks, or even a few months. However, we have embarked on this task in a way that will build a sound foundation for our activities rather than simply fight fires from day to day. We are committed to completing this strengthening process, and I give you my assurance that this commitment will remain as long as I have this responsibility.

Within the last 60 days, the Senate has confirmed the appointments of two key people who will be responsible for much of the implementation of our plans, Mr. John Hill as Deputy Administrator and Mr. Smith as Assistant Administrator. The Senate now has before it the President's nominations of Mr. Eric Zausner as Deputy Administrator and Mr. Thomas Noel as Assistant Administrator for Management and Administration. These key people share my commitment to upgrading our compliance program and our other programs as well. With them in place, I expect to see the pace of improvement pick up sharply.

We recognize a responsibility for compliance efforts that will extend well beyond the expiration of our current regulations. We must complete a thorough audit of the industry's practices, especially during the period of the embargo, to assure the Nation's consumers that they have been treated fairly. Because of the particular vulnerability of utilities to overcharges, which stems from their requirement to continue to provide service and the fact that some of them may have been in a position to bargain less hard for supplies of fuel than other customers, we need an expanded effort in this aspect of the program. Our refinery audit program needs more manpower and better procedures, and producer audits need to have additional effort.

Moreover, we must be prepared to respond to future developments more rapidly and effectively than we have been able to do in the past. We must assure not only that FEA's regulations are complied with, but also that any evidence of criminal intent is brought immediately to the attention of the Department of Justice for appropriate action.

I have reviewed with you today in general terms some of the initiatives we already have underway toward these ends and others we will take soon. More important even than these, in my view, is the way we approach this responsibility.

We are determined to learn from our mistakes and from our successes and to continue taking whatever measures may be required to improve our programs.

A great deal of progress has been made but as you can see we still have some distance to go. I am absolutely certain that we will make important improvements as quickly as we can. To do so is our clear responsibility, and we are all committed to discharging that responsibility to the end that FEA's regulations are enforced to the maximum extent of our capability.

These hearings as well as continued counsel with the GAO will provide FEA with new information and guidance, all of which is helpful in achieving the results we all want.

Senator KENNEDY. Our next witness is Phillip Hughes, the Assistant Comptroller General of the United States.

STATEMENT OF PHILLIP S. HUGHES, ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES, ACCOMPANIED BY J. DEXTER PEACH, DEPUTY DIRECTOR, OFFICE OF SPECIAL PROGRAMS; AND VERNON TEHAS, SUPERVISORY AUDITOR, DALLAS REGIONAL OFFICE, GENERAL ACCOUNTING OFFICE

Senator KENNEDY. You are accompanied by J. Dexter Peach, who is the Deputy Director, Office of Special Programs, and Vernon Tehas, who is the supervisory auditor of the Dallas regional office. I am going to ask you to rise.

I swear the testimony I am going to give is the truth, the whole truth, and nothing but the truth?

Mr. HUGHES. I do.

Mr. PEACH. I do.

Mr. TEHAS. I do.

Senator KENNEDY. We will include your prepared statement in the record, if you would like to summarize it.

Mr. HUGHES. If your time is constrained, Mr. Chairman, my judgment would be it would take 20 to 25 minutes to read the statement. I can probably brief it in less.

Senator KENNEDY. We will have it printed in its entirety.

Mr. HUGHES. You are well aware of the special statutory requirements with respect to our monitoring of the Federal Energy Administration activities and pursuant to those requirements we have issued a number of reports on Federal Energy Administration activities. In a December report we pointed out some significant problems. First, there was no direct audit of crude oil producer operations. We felt also there was an unwarranted concentration of audits at the retail level, that audits of refiner operations were not completed, that substantive issues with respect to regulations remained unresolved, and that organizational and other disagreements within FEA hindered audit work.

FEA has responded by attempting some redirection of its compliance and enforcement activities. But our general judgment is that these problems, by and large, remain.

With respect to the staffing of the effort, the numbers that we have identified are somewhat at variance with those discussed earlier. We understood FEA's plans were to have 784 personnel assigned here. As of May 30 we believe they had 727 regional employees.

They have had problems in redeployment of staff; and, as they have indicated, in recruitment, because of the nature of the program be-

cause they have borrowed from other agencies, notably IRS, and so on. At the time of our December report, no staff were assigned to audit the 19,000 producers of crude oil. By January 1975, they did, however, begin to audit producers. They have 78 auditors assigned as of June 13. They had initiated a large number of investigations and completed 115. They have identified a relatively small dollar amount of violations thus far.

VERY LITTLE WORK ON PRODUCTION AUDITS OF MAJOR COMPANIES

Moreover, as I think was indicated in earlier testimony, the producer-audit program has been directed only at independent producers. Audits of major oil company crude producers are to be done as a part of the refinery audit program. Very little work on that has been done to date.

Senator KENNEDY. Did you make any assessment as to the reasons for that?

Mr. HUGHES. I am not aware of any. Let me ask my colleagues. I have made no assessment.

Mr. PEACH. Senator, FEA changed the direction in the refinery audit program sometime earlier to go to what they call a module approach, setting up a number of audit modules. One of the audit modules set up concerned producer. As of yet, though, they have done very little work on that particular audit module, and the producer audit operation as it is working is directed at independent producers, and the refinery production is supposed to be under the refinery audit effort.

You've had some discussion earlier about the limited number of staff presently assigned and the problems in geting up to staffing levels in the refinery audit effort, which probably had contributed to this somewhat.

Senator KENNEDY. Mr. Tehas, how is that auditing program going for auditing the production operations of the major integrated refining companies?

Mr. TEHAS. Mr. Chairman, they are looking at the module covering crude production in a number of the companies. However, the guidelines that they have been given are in draft stage, have gone through two drafts, and still exist as drafts. I have talked to several of the area managers who are responsible for these audits, and they have advised me that generally the work has been suspended until they are more certain of some of the decisions on regulatory questions affecting the producers' pricing of crude.

Senator KENNEDY. What can you tell us then in general about FEA's audit of the major refineries? Approximately how many people are working in that area?

Mr. TEHAS. It's hard to define, Senator. Most companies have three to four auditors assigned, and they are attempting to cover as many of the modules as they can. The primary emphasis, however, has been directed towards a mathematical verification of a monthly report that the refiners submit to FEA, and in comparing that report back to previous months, to try to identify significant differences. Other work has included following up on certain complaints against individual refiners.

The continuation of the audit of the production of majors will be hampered just as is the audit of the independent producers because regulatory questions relating to classifying of certain leases, accounting for leases which have been unitized, and computing the base level production against which current production is measured. Therefore, the audits cannot be completed.

Senator KENNEDY. How many reports have been issued on the modules?

Mr. TEHAS. As of last week, there were 11 reports on the modules. As I say, at least three of them were related to complaints. One of them was a request from the Puerto Rico Power Commission to investigate the fuel charges to the utility. Only one of them related to crude production, and the extent of it was to gather some data which has not been completely analyzed as yet.

Senator KENNEDY. How many of the modules does FEA have guidelines for?

Mr. TEHAS. Approximately 8 of the 20; maybe 7.

Senator KENNEDY. So for at least half, or more than half, they do not have guidelines?

Mr. TEHAS. That's right, Senator. What the auditors are assuming is that they should go back to the guidelines which existed under the old cycle audit process and try to follow those as best they can to cover the new module areas. However, definitive guidance has not been passed down from the National office.

VERY LITTLE SUBSTANTIVE WORK ON AUDITS OF MAJOR COMPANIES

Senator KENNEDY. How much substantive work is reflected in these module reports?

Mr. TEHAS. Very little, sir.

Senator KENNEDY. Would you elaborate?

Mr. TEHAS. Yes, sir. Let me seek some information here.

Senator KENNEDY. We will come back to you if you would like to look over your notes.

Mr. HUGHES. I might comment, Senator. I think in our collective judgment the refinery audit problem, like some of the rest of the problems of FEA, is a matter of priorities and allocation of manpower. For example, the 10 largest companies have a total of 36 auditors assigned. The audit program is a very complex and comprehensive one, and as a consequence, the limited manpower simply has not been able to complete it. Notwithstanding this, it has provided to be a rather fertile field for discovering violations, and the volume is rather high. The agreement has been reached or notices issued on violations totaling $474 million.

Senator KENNEDY. $474 million?

Mr. HUGHES. Yes, sir.

Senator KENNEDY. Those are different from the earlier figures that I quoted that were given to us by FEA, which totaled $267 million.

Mr. PEACH. I'm not sure precisely of the reason for the difference, the figures we cite include both instances where agreement has been reached or where they had issued notices of probable violation to the company indicating the company that they feel there is a violation in a set amount.

Mr. HUGHES. There are additional violations of approximately the same amount in various stages of development.

Senator KENNEDY. Are there differences between the figures that we were given and the ones you were given?

Mr. TEHAS. Mr. Chairman, yes, there are. In providing you with information as to dollar amounts in some cases, they may have advised you that a dollar amount was not available, whereas such a figure was either available with the auditor or in additional documentation which is not incorporated in the reports they gave you.

FEA DOES NOT HAVE AN OPERATIONAL CASE TRACKING SYSTEM

Mr. PEACH. I think it goes back to a basic question, too. There was a discussion, or has been some discussion, at least in Mr. Zarb's statement, about the kind of information they have to know the status of cases at a particular time. They do not have such a system in operation at this point in time, and everytime they try to develop information on the status of cases, it's pretty much built up from the ground. There's a tendency to build it up a little differently each time it's built up.

Senator KENNEDY. What does that do in terms of not having a system for keeping track of the status of cases? What does that say about efficiency?

Mr. HUGHES. Mr. Chairman, may I make this amplification, if you will, on further reflection of some problems you talked about this morning at considerable length. The agency was born in a state of emergency, so to speak. It operated on a highly decentralized basis. Agencies in that state have great trouble developing either centralized policy or centralized management information, and the data or management data base, needs to be significantly improved.

Senator KENNEDY. Mr. Tehas, do you want to add anything?

Mr. TEHAS. Yes, Senator. Those 11 reports that were referred to earlier have been issued in relation to four refining companies, none of which are anywhere near the top 10 of the 30 being investigated. On one company a total of six reports were issued, and on the first module, which is the desk review of the forms the company submits every month, they had audited only the reports for the months of October and November 1974, realizing that this module approach was initiated in February 1975, and these reports were issued within the last several weeks. On the same company, they did look at the crude production module, which would include the question of production and they had audited only the month of October 1974, and in that audit they had used the old guidelines which had existed before the module approach, and, as I mentioned earlier, all they had done was accumulate some data which they had not completely analyzed.

At least three of them were investigations of complaints which would relate generally to one dissatisfied customer of the oil company and generally to only one action of the company. In one company, they had looked at the area of pricing, and they indicated in the report they had only gathered preliminary data. As I mentioned, they did look at the sale of fuel oils in Puerto Rico, and found some violations by a particular refiner.

One report relates to a complaint on allocation, how much a particular customer of a company was receiving in relation to what he thought he was entitled to receive.

LOST CASES

Senator KENNEDY. Do you have any cases that were lost?

Mr. TEHAS. Yes, Senator, we do.

Senator KENNEDY. By the FEA?

Mr. TEHAS. By the regional offices of FEA; yes, sir.

Senator KENNEDY. Is that just one case, or are there a number of such cases? How do you lose a case?

Mr. TEHAS. In our investigations at one of the field offices of FEA, we found that draft NOPV's, were lost in moving from the field auditor to the regional office. In some instances it was thought at the area level office that the draft NOPV was in process at the regional office, when, in fact, the NOPV's were not in process at the regional office, and, further, the regional office had no record of receiving the drafts.

In another instance, one third-cycle audit report, it was stated that a draft NOPV had been sent to the regional office for processing and that additional data on the issue had been requested. As late as March 1975, the responsible auditor believed the additional data was still needed at the regional office, but we found the regional personnel were not aware an NOPV had been drafted on the issue. This is due to some change in personnel and lack of continuity of information between them.

We did find documentation showing that the draft NOPV was received at the regional office on September 24, 1974, and we're asking in March 1975 about it.

Another draft NOPV, potentially involving $17 million in violations, appeared in the third-cycle report, dated January 27, 1975, with the notation that the draft NOPV would be submitted to the regional office. We found no record that the draft had been received in the regional office.

Senator KENNEDY. I think we can go on. I think the point is, and I may be wrong, but I do not think you find cases being lost at the Justice Department, for example, when they have a change of personnel. Maybe they do, but I have not heard of any cases being lost at the Justice Department.

Mr. TEHAS. We did not expect to find it in FEA either, sir, but it did occur.

Senator KENNEDY. Let us continue.

Mr. HUGHES. I mentioned, I think, a rather significant volume of violations or agreements totaling $474 million. The most of the corrective actions that took place with respect to these violations involved the writing off of the value against the so-called banked costs. Banked costs are potential legal price increases which, in the judgment of the company, the market would not absorb, and under FEA regulations they would be saved against the possibility of future price adjustment. The collective banks, which as of February 28, totaled about

$1.4 billion, have been written down from a total of about $2 billion at the end of September 1974, $417 million of this consisted of a writeoff of these violations.

There are currently about 162 auditors assigned to audit refineries. You are, I think, generally aware of the pattern that they are now following. With respect to wholesalers and retailers, FEA has pointed out that it initially concentrated compliance and enforcement efforts at the retail level because of public sensitivity here and the relative ease of investigations. They are now, however, working also at the wholesale level, and they have taken some actions which have resulted in refunds to the public of about $87 million and penalties of $737,000.

There are two special enforcement programs underway at the wholesale level, one of which is propane program, which I will pass by. The other is so-called Project Utility, which reference has been made to here today. I think Mr. Zarb also mentioned he had asked us to review their effort in this area, and we have done so, and summarized our findings for Mr. Zarb, and also in the statement. We found that, while FEA had intended to assign something of a hundred investigators to the area, that the effective manpower level was much less, and for example, the average level for a period from January to April was 45, and for the week of May 16 was 22. Apparently, currently, about 50 investigators, in terms of man days, are actually assigned to the project.

We had some other problems with the effort. It seems to us that the emphasis that has been placed on it may be unwarranted vis-a-vis the other alternative priorities for FEA attention. The volume of violations has been lower than originally anticipated, although there have been one or two spectacular cases, which apparently influenced the whole effort.

Again, in this area, as in others, we think there have been inadequate criteria for selecting suppliers for audit. We think some concentration in selection would produce a more effective audit investigation effort.

$737,000 COLLECTED IN PENALTIES AGAINST RETAILERS AND WHOLESALERS BUT NONE AGAINST REFINERS

Senator KENNEDY. Do you have any impressions as to why no penalties were collected against companies in the refinery audit program? What do you think accounts for this when $700,000 is collected from wholesalers and retailers?

Mr. HUGHES. Let me ask Mr. Tehas and Mr. Peach if we have any evidence, or if they want to comment?

Mr. TEHAS. I believe the discussion you had with the FEA officials was pretty much along the lines of what has been happening, sir. It has been much more difficult for the smaller businesses to interpret the regulations because of their ambiguity, because of their broadness, and many times, their vagueness and, while I am not sure whether FEA does have different policies toward the size of the industry in applying their penalties, I know there is a vast inconsistency and misunderstanding of what the agency's policy is, and, therefore, many individual judgments are made as to whether or not to assess a penalty.

Senator KENNEDY. Confusion by whom?

Mr. TEHAS. By the individual auditor responsible for the investigation and by his superiors who have to approve his decision. This would

mean, basically, his area manager and regional administrator and regional counsel.

But, as far as the refiners, the types of violations are not dissimilar.

Senator KENNEDY. Is this why in some regions they recover penalties, and in other regions they do not?

Mr. TEHAS. Yes, sir; that's correct. In some regions they hold the opinion that a violation, whether intentional or not, is a violation under the regulations, subject to penalty, and, therefore, at least a compromise penalty should be sought. In other regions, they believe that there are some judgmental factors as to intent, the amount of violation and the benefit the company received, so that there are varying interpretations of this procedure.

Senator KENNEDY. Region VII collected $42,000 in penalties from independent crude oil producers, and in region VII there were no penalties, even though region VII produces close to two-thirds of the total amount of crude oil.

Mr. TEHAS. Yes, sir, those two regions hold the two opposing opinions or two interpretations of what should be done.

Senator KENNEDY. With the same guidelines or different guidelines?

Mr. TEHAS. No, sir, as has been pointed out earlier, there are no real guidelines. FEA acknowledged that in response to one of your questions, and that is, in fact, true.

FEA REGIONS DID NOT NOTIFY STATE UTILITY COMMISSIONS

Senator KENNEDY. I would like to ask about the utilities supplier audit program. Mr. Hughes, what did your study show about the notification that was given by FEA to the various State regulatory commissions in those cases where FEA found there was an overcharge?

Mr. HUGHES. Either Mr. Peach or Mr. Tehas may wish to comment. In general, have found no hard evidence that this process takes place routinely. Mr. Zarb, or I guess Mr. Smith, said it was a matter of policy to do that. I guess we were a little surprised, but let me ask my colleagues.

Mr. PEACH. Mr. Senator, we were concerned about the downstream effect of how you get refunds back to the ultimate consumer. In discussions with the FEA personnel in the regions we visited, regarding actions to notify State utility commissions, we had no response to the effect such action was being taken. They felt rather unsure as to whether it was inappropriate for them to do so, or not.

Mr. HUGHES. Part of our comments to Mr. Zarb——

Senator KENNEDY. These are impressions of people who are in the operational line?

Mr. PEACH. Yes, sir. That's correct in essence, if, in fact, it's the policy from the national level to give such advice to state regulatory commissions, it was not happening because the FEA regional personnel did not feel that was their understanding of what they were supposed to be doing under the circumstances.

Mr. TEHAS. You might note, Senator, that the violations found in the utility program have only a limited amount which relate to utilities. Much of the amount of the violations relate to nonutility customers. The dollar value and the number of violations in relation to utilities is small.

LACK OF PROCEDURES TO RETURN OVERCHARGES TO CONSUMERS

Senator KENNEDY. What procedures did you find within FEA to provide for returning overcharges to consumers? What procedures does FEA have to return moneys upstream to the people that paid for them in the first place?

Mr. TEHAS. We have looked at them with respect to specific audits and examined how specific actions were taken. We find that FEA would generally direct the violator to refund the amount overcharged if an individual customer can be identified. If an individual customer cannot be identified, then they will direct a rollback price, a reduction in price, for a period of time until the amount of violation has been recovered. In other instances as in relation to the refiners, most of the violations have been adjusted against these banks which, in FEA's view, preclude the eventual passthrough of those cost price increases. However, we found little attention on the part of the auditors to verify that the person receiving the refund, if he is a middle man, a reseller, that he has also passed that on to his customers so that it does eventually reach the ultimate consumer.

Senator KENNEDY. So they do it to the first person, but there is no followup to see that the refund is actually returned to the consumer.

Mr. TEHAS. Not unless they perform an audit of that first person and find him also in violation. As part of that audit they would then investigate to see whether he did return a refund he received. This is not done very frequently.

Senator KENNEDY. I suppose it is difficult to expect FEA to audit everyone all the way back to the consumer, but it seems to me that you could set up some kinds of rules and regulations that would pass the refund back to the consumer and provide some benefit to him.

Mr. HUGHES. It seems to me, Senator, that part of the answer is as much notification and publicity as possible when a violation was found and the customers themselves can then pursue the matter.

With respect to the utility audit, I think I perhaps should review what we think we told Mr. Zarb because I was not sure when he expressed agreement with us whether we are in agreement or not on the matter. We think, as I have already indicated, there may be an unwarranted emphasis in the utility area per se, that major customers across the board are a useful source of investigative efforts and that investigative effort on a sample basis perhaps can give clues as to that direction in which the audit effort in more detail could move.

So we had recommended the return to more balanced audit operations covering producer, refiner, wholesaler, and retailer areas, and on a selective and testing basis, probing further where necessary. We would propose to refine the wholesaler investigations by implementing more consistent criteria for selecting suppliers and by identifying suspicious supplier transactions and then establishing priorities, as I have suggested.

Finally, we think there are a number of regulatory questions that need to be resolved in order to make this effective, and notably the matter of the status of brokers. Brokers evolved particularly during the embargo period and there is great dispute as to whether they are covered, since they never took title or possession of the product. The question has never really been satisfactorily resolved.

With respect to administrative sanctions, the process has been, I think, adequately described, but for reasons that you have already

directed your attentions to, lack of uniformity and the application of penalties and so on, the results have been rather spotty.

Senator KENNEDY. Let me ask you, Mr. Hughes, how many years have you worked with the GAO?

Mr. HUGHES. I have been there about three.

Senator KENNEDY. Do you have a background in accounting?

Mr. HUGHES. No. I am a fugitive from the executive branch, Mr. Chairman. I have spent 20 years in the Bureau of the Budget, but the accountants certainly will not claim me. And I guess I reciprocate.

HUNDREDS OF MILLIONS OF DOLLARS IN COSTS TO CONSUMERS

Senator KENNEDY. There is a vote on the floor and we have only about 4–5 minutes left. We have talked with some degree of specificity about a number of technical matters, penalties, and different procedures. Could you describe briefly what all of this means in terms of the American pocketbook? What are we talking about here in terms of the potential violations of FEA regulations? Are we talking about millions of dollars? Are we talking about tens of millions? Are we talking about hundreds of millions or billions of dollars?

Mr. HUGHES. We have done some estimating, Senator. Obviously with the present state of FEA's effort, this is speculative business. I think, by and large, however, this is not a matter of dispute with FEA. In the retailer-wholesaler area, we just do not know.

With respect to producers there are a number of compliance actions, some complete and some incomplete. a total of about $12 million identified and probably a smaller, undetermined amount. With respect to refiners, about $456 million, more or less identified, with perhaps an equally large, undetermined amount. With respect to utilities, about $43 million with rather small, undetermined actions now in the works. And with respect to propane, about $38 million.

I think all of these numbers need some interpretation to be fully understood. However, the short answer to your question is that the implications for the buyer or the customer are rather significant and well beyond the tens of millions and into the hundreds of millions.

Senator KENNEDY. Certainly hundreds of millions of dollars. That is what we are really talking about in terms of the pocketbook issue and the inflationary implications of these hundreds of millions of dollars in overcharges to the American consumer.

This certainly is one of the reasons why we are so concerned that there be effective enforcement of the legislation and of FEA's regulations, and oversight by the Congress and compliance by the industry. But adequate information must be provided to the petroleum industry so that it can comply fully with the regulations. I think you are quite correct. I am sure that many companies do not know what to do because of confusion over the regulations which have yet to be adequately clarified or are nonexistent.

LENGTHY DELAYS IN THE ENFORCEMENT PROCESS

Can you tell me about the delays? In your opening statement you discussed cases involving lengthy delays after a violation is discovered. Mr. Tehas, I know you have looked into this.

Mr. TEHAS. As an example, Mr. Chairman, we have identified a violation which FEA had identified in July of 1974, in which they in fact

had issued an initial compliance action called a notice of probable violation. This involved several issues with the company, but two of the major ones accounted for something in excess of $114 million, one of the issues being over $110 million.

As of this day that action has not been settled. There have been numerous meetings, numerous pieces of correspondence, numerous amounts of consideration in the regional offices, in the national offices, relating to this matter.

But again, as I say, as of this date that action has not been brought to completion. It does involve a question of regulatory interpretation. That matter has been in the General Counsel's office since at least October of last year and a decision has not been made on it.

Mr. HUGHES. As a generalization, Mr. Chairman, as of May 30, 1975, there were 126 proposed compliance actions, some of them as much as 6 months old and unresolved.

Senator KENNEDY. Is that a reasonable backlog?

Mr. HUGHES. It seems to me, Mr. Chairman—I am sort of a manager rather than an auditor—that the essence of good and effective administration, particularly in an area where potential violations of law are involved requires some sort of time schedule, some sort of deadline which can be adhered to, and which assure both the consumer and the producer that the administering agency is serious and will act effectively to administer the law.

Senator KENNEDY. That is the 5-minute warning. We are going to have to recess. We might submit some questions to you, if we may, Mr. Hughes. Your testimony has been very helpful.

I think you know how much the Congress relies on the GAO. We want you to know how much we appreciate the thoroughness of your report on FEA to this subcommittee.

[The prepared statement of Phillip Hughes follows:]

PREPARED STATEMENT OF PHILLIP S. HUGHES, ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES

Section 12 of the Federal Energy Administration Act of 1974 specifically directs that GAO monitor and evaluate operations of the Federal Energy Administration (FEA). We have done considerable work pursuant to that legislative mandate and a request by the Chairman, Senate Committee on Government Operations, asking that we report periodically on the results of our work. Much of our work has concerned FEA's compliance and enforcement program.

In a December 1974 report, we pointed out that significant problems in FEA's compliance and enforcement program existed at all levels of petroleum industry operations. For example:

There was almost no direct audit of crude oil producer operations.

FEA concentrated its audits at the retail level and found numerous violations; however, there was evidence of large violations at the wholesale level where little audit effort was made.

Audits of refiner operations were not completed.

Substantive issues relating to the adequacy of regulations remain unresolved.

Organizational disputes within FEA hindered audit work at refinery operations.

In responding to our report, FEA stated that it would redirect its compliance and enforcement efforts by, among other things, initiating a program of direct audits of crude oil producers and increasing its emphasis of audits of major oil refineries. We have continued to monitor and evaluate FEA's efforts to improve its compliance and enforcement effort. In our testimony today, we will discuss FEA's major compliance and enforcement efforts and provide our observations regarding current problem areas.

STAFFING

The success of any compliance and enforcement program is dependent to a large degree on the level of staffing assigned to the program and the manner in which personnel are allocated within the program. In commenting on our December 1974 report, FEA stated that it intended to have 784 personnel assigned to regional compliance and enforcement activities by December 31, 1974. As of May 30, 1975, FEA had 727 regional employees assigned.

FEA has experienced delays in redirecting efforts from the retail level to other areas because of the problems in redeploying staff among regional offices and in recruiting additional technically qualified investigators for the more complex producer and refiner audits. In addition, new programs within the compliance and enforcement effort such as the widely publicized effort to investigate utility fuel oil suppliers have drained off staff.

PRODUCERS

At the time of our December report, no staff had been assigned to audit the 19,000 producers of crude oil. Audits of producers are important because their operations determine the price of crude oil used in refineries. Under price regulations, oil produced in the United States sells at either a controlled price of about $5.25 per barrel or the world market price—which has been as much as about $12 per barrel. With such a price difference, an adequate program of verification is needed if we want to be sure that purchasers of crude oil and, ultimately, consumers are not overcharged.

In January 1975, FEA began to audit crude oil producers. As of June 13, 1975, FEA had 78 auditors assigned to this program. Investigations of 267 producers have been initiated. One hundred fifteen investigations have been completed. Violations found in 20 of the investigations resulted in refunds of about $1.1 million and penalties of $59,500. FEA is preparing notices of probable violation in an additional 39 of the completed investigations.

We are currently reviewing the effectiveness of FEA's producer audits. Thus far our work has shown that basic regulatory questions will have to be resolved before the producer audit program can be conducted in an efficient and effective manner.

Moreover, FEA's producer audit program is directed only at independent producers of crude oil. Audits of major oil company crude production—which accounts for about 65 percent of domestic crude oil production—are to be done under the refinery audit program. Little work, however, has been done to date.

REFINERS

FEA's refinery audit program seeks to insure that refiners increase prices only for allowable cost increases. FEA has concentrated its efforts on 31 refining companies which account for 85 percent of refining capacity.

In our December 1974 report, we pointed out that while FEA had developed a complex and comprehensive audit program for refiners, the auditors consistently fell short in completing important parts of the program and did not expand work where discrepancies were noted. At that point FEA had assigned only two auditors to each company. Since many of the refinery companies are billion dollar corporations with numerous subsidiaries and multi-national operations, it is not surprising that the effort fell short.

Notwithstanding the lack of completion of audits, the refinery audit program uncovered substantial violations. As of May 1, 1975, FEA reported that under the refinery audit program, agreement had been reached or notices issued on violations totaling $474 million. Additional violations involving $456 million were in various stages of development. No penalties have been assessed in the refinery audit program.

The majority of refiners' corrective actions have involved writing-off a portion of the violation against paper-cost increases accumulated under the "banking" provision of FEA's regulations. This provision allows refiners to "bank" cost increases which they feel cannot be immediately passed on in the market place and has resulted in large accumulations of unrecovered costs. FEA officials told us that as of February 28, 1975, the latest information available, the collective "banks" totaled about $1.4 billion—a reduction from the $2 billion in banked

costs at the end of September 1974. As of the end of February, refiners had written off about $417 million in violations against their "banked costs."

FEA currently has about 162 auditors assigned to the audits of refineries. It plans to locate staffs of three to five auditors at the major refiners depending on the size of the refining operation. In February 1975, FEA shifted its audit approach to what it calls a "module system." Under this system, auditors will concentrate their efforts on specific areas—such as domestic crude production, foreign transactions, etc.—and report on each area when work is completed. Previously, auditors were to cover all steps in the audit program on a three month cycle basis.

WHOLESALERS AND RETAILERS

FEA officials told us that they initially concentrated compliance and enforcement efforts at the retail level because they believed the public was more sensitive to retail violations. In response to our December 1974 report, they stated that they would curtail retail investigations and concentrate more on the wholesale level. FEA records do not break down between wholesale and retail investigations; however, as of May 30, 1975, FEA had made investigations of about 92,000 firms—both wholesale and retail—resulting in refunds to the public totaling $87 million. An additional $737,000 in penalties had been collected from violators.

FEA has two special enforcement programs underway at the wholesale level.

PROPANE

FEA began a special investigation of propane wholesalers in December 1973. As of June 9, 1975, FEA had 59 auditors assigned to propane investigations. Of the 108 investigations initiated under this effort, 23 cases have been closed. Violations found in 14 of these cases resulted in refunds of about $4 million and penalties in the amount of $22,500. FEA estimates the total amount of violations found under propane investigations may amount to about $30 million. Many of the investigations remain open, however, because of unresolved regulatory questions.

PROJECT UTILITY

FEA began a widely publicized audit of suppliers of fuel oil to utilities—now termed "Project Utility"—in December 1974 with a 30-investigator task force. At that time FEA officials estimated that violations by utility suppliers could total $100 million.

Statements by FEA officials have indicated that 11 investigators were assigned to this effort. Recently, the FEA Administrator has indicated his intention to substantially expand the investigation. Several weeks ago we agreed with the FEA Administrator to make a quick review of Project Utility. We briefed Mr. Zarb last Friday on our findings and expect to issue him a report shortly which will be available to this subcommittee.

Although FEA reports as of May 16 indicated that 111 investigators were assigned to the project, the effective manpower level was much less. For example, the effective manpower level assigned to the project from January to April was 45 and for the week of May 16 was 22. An FEA report dated June 13 indicates about 50 investigators assigned to the project.

As of May 16, 1975, FEA investigators had examined fuel oil purchases of 48 utilities and identified 336 suppliers for investigation. Of the 80 cases closed as of that date, 9 suppliers were found in violation. The violations, as adjusted by GAO, amounted to about $1.7 million. About $600,000 of this amount was attributable to violations on sales of fuel oil to other than utilities. In the six FEA regions we visited, officials estimated total potential violations based on cases in process at about $5.2 million. There are at least two cases involving sizeable potential violations in excess of $10 million in process in four other FEA regions.

Two conclusions can be drawn from the status of investigation. First, the results to date have not lived up to expectations. Second, a supplier overcharging utilities is just as likely to overcharge other customers such as railroads, municipalities, and airlines. This latter point was emphasized to us by FEA regional personnel in regions we visited.

We also identified several problems regarding the implementation of Project Utility. They included:

Inadequate criteria for selecting suppliers for audit. This resulted in inconsistent practices among FEA regions and a substantial audit effort in

areas unlikely to yield violations. For example, some regions were auditing all transactions of all suppliers of a given utility, instead of concentrating on suspicious transactions occurring during the period of the embargo when oil was in short supply.

Substantial delays occurred in collateral investigations. Various suppliers to a utility are often located in geographic areas under the jurisdiction of other FEA regional offices. As of June 1, 1975, there were 100 requests for collateral investigations outstanding in the six regions we visited. Many had been outstanding since January and February 1975.

Several regulatory questions have not been resolved. The principal questions concerned the applicability of FEA regulations to brokers who came into business during the embargo period. These brokers generally did not take title or physical possession of the product and maintained that they were merely charging a commission for bringing together a willing buyer and a willing seller.

In briefing the Administrator last week, we suggested that Project Utility, as a special effort outside the scope of wholesale audits, should not be expanded significantly. Instead, we suggested:

Phasing out of work in process taking accomplishment for findings already identified. Actions required to phase out work in process include completing promising collateral investigations and initiating compliance agreements or notices of probable violation within a set time period on all outstanding investigations. Other cases would be returned to the wholesale audit status.

Returning to balanced audit operations covering producer, refiner, wholesaler, and retailer areas according to some criteria for assigning priority.

Refining wholesaler investigations by implementing consistent criteria for selecting suppliers and for identifying suspicious supplier transactions requiring further investigation. Priorities can be established within the wholesale area and it is logical that utilities and other major customers of wholesale suppliers could be used to identify suppliers for audit.

Resolving outstanding regulatory questions, including the status of brokers.

ADMINISTRATIVE SANCTIONS

When FEA believes a provision of the price regulations has been violated, it first attempts to obtain a voluntary price rollback and a refund of overcharges to consumers or the market place.

If compliance cannot be achieved voluntarily, FEA issues a notice of probable violation (where the violation was likely but not certain) or a remedial order (where the violation appears certain or repetitive). If the company complies with the actions required by FEA the violation is rescinded.

We recently reviewed the procedures used by FEA to process notices of probable violation and remedial orders. Our work was concentrated at FEA's regional offices in Dallas, Texas and San Francisco, California. Compliance and enforcement personnel assigned to these two FEA regions are responsible for auditing 17 of the 30 largest refining companies.

Our review disclosed serious problems with the procedures utilized when the refiners were found in violation of pricing regulations. We found that the effectiveness of the administrative sanctions was questionable because of unreasonable delays in decisive action by FEA. Agency reviews were repetitive and time consuming and no clear responsibility was assigned for bringing violations to a conclusion. As of May 30, 1975, over 126 proposed compliance actions—some of which were as much as 6 months old—remain unresolved. Unresolved compliance actions which had been quantified totaled about $456 million. Many of the unresolved cases had not been assigned a dollar value.

We believe that once a violation of price regulations has been identified, expeditious processing is vital to a viable enforcement program. We found a virtual lack of records indicating the status and location of administrtaive sanctions in process. We believe as a minimum, FEA must establish some central control so it can assure the timely processing of such actions.

REGULATORY ISSUES

FEA had to prepare and issue price regulations for the petroleum industry in a crisis atmosphere. The initial regulations contained gaps and ambiguities which have required numerous revisions and interpretations. Over 85 regulatory amendments or rulings have been made since January 1974.

Delays in resolving regulatory issues have been a major impediment to FEA's compliance and enforcement effort. An example of this is FEA's handling of natural gas liquids.

Since the original publication of the petroleum pricing regulations, FEA has maintained that its regulations apply to natural gas liquids produced by natural gas plants, such as propane, butane, and natural gasoline. Ntural gas plants produce about 75 percent of all natural gas liquids. The remaining 25 percent of natural gas liquids are produced as a product of the crude oil refining process.

Natural gas plant operators have maintained that they are not covered under the petroleum pricing regulations because they do not use crude oil as an input. As a result, natural gas operators have consistently charged prices for their products without regard for the petroleum price regulations. In early 1974, FEA recognized that the noncompliance of gas plant operators was a significant regulatory problem. While FEA prepared no definite economic analysis of the potential impact of its regulatory options on the industry, FEA officials estimated that strict application of price regulations could have resulted in at least $1 billion in pricing overcharges.

FEA issued regulations, effective January 1975, governing treatment of natural gas liquids prospectively. Subsequently in May 1975, FEA issued a ruling and proposed exception which would make the January regulations retroactively applicable to gas plants during the period August 1973 through December 1974. The ruling and proposed exception would in effect justify some of the increased prices charged by natural gas plants during this period. However, because the exception is still a proposal, FEA cannot undertake effective enforcement and compliance efforts concerning natural gas operators until it is finalized.

In closing my prepared remarks, let me emphasize our view that FEA should continue efforts to improve its program so as to provide adequate assurance that price regulations are being followed.

Senator KENNEDY [continuing]. The subcommittee will recess until tomorrow morning.

[Whereupon, at 12:40 p.m., the subcommittee recessed, to reconvene on Friday, June 20, 1975, at 10 a.m.]

FEDERAL ENERGY ADMINISTRATION: ENFORCEMENT OF PETROLEUM PRICE REGULATIONS

FRIDAY, JUNE 20, 1975

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE
PRACTICE AND PROCEDURE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to call, at 9:55 a.m. in room 2228, Dirksen Senate Office Building, Hon. Edward M. Kennedy (chairman of the subcommittee) presiding.

Also present: Thomas M. Susman, chief counsel; Kenneth M. Kaufman, assistant counsel; and James F. Michie, investigator.

Senator KENNEDY. The meeting will come to order. We have a time constraint this morning. According to the rules of the Senate, it is only with unanimous consent that committees may meet during the time the Senate is in session, and an objection has been filed prohibiting any committee meetings this morning beyond 10:30. I regret the inconvenience to our witnesses. But we will file my statement in the record, as read.

OPENING STATEMENT OF SENATOR KENNEDY

Senator KENNEDY [continuing]. The Subcommittee on Administrative Practice and Procedure this morning begins its second day of hearings into the compliance and enforcement practices of the Federal Energy Administration.

Yesterday, we heard testimony from Administrator Frank Zarb and other top officials at FEA's national office and from the General Accounting Office. We learned a great deal about how FEA's compliance and enforcement program works, and how it does not work.

We saw numerous examples of such matters as:

The lack of procedures and guidelines in several important areas of FEA's enforcement activities.

The unclear lines of authority and communication between FEA's national office and the regional offices, resulting in a serious nonuniformity of enforcement.

The long delays and the inability to clarify key issues that have resulted in a large backlog of pending cases and in some lost cases.

The problems with FEA's allocation of manpower, particularly regarding its refinery audit program.

The tougher enforcement directed against the small and independent operator as compared with the major integrated oil company.

Today we will hear the views of auditors and compliance officials who have firsthand experience with these problems in the field. We

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will find out firsthand the problems involved in enforcing unclear regulations and vague or nonexistent guidelines, and in doing so without formal procedures or uniform practices.

I would like to welcome our witnesses this morning, who have traveled here from Massachusetts and Texas. We are going to have them appear as a panel because of the time constraints imposed on us by Senate floor action.

All the witnesses on the panel below the level of regional director are appearing pursuant to subpenas issued by the subcommittee. The subcommittee requested their testimony, and they are appearing under the full protection of formal subpenas.

Mr. Zarb has given me his personal assurance that all FEA employees have been encouraged to testify before the subcommittee and that no action will be taken against any employee for testifying or providing information to the subcommittee. I will ask that the documents reflecting our understanding be made a part of the record. I would like to ask all our witnesses to bring to my immediate attention any event which they believe to be inconsistent with this understanding.

We are delighted to have you witnesses here this morning. We heard during the course of yesterday's hearing what the view is at the top of FEA. Now, we want to find out what is the reality out in the field. This is really what we are interested in. Thus far we have gotten some insight from memorandums and communications between FEA's national office and its 10 regional offices revealing a number of problems; yet we heard certain assurances from national office officials. So I am hopeful that today's testimony from regional personnel will help us to focus more clearly on what the real situation is.

Our witnesses today are Paul Maloy, who is the regional director of compliance and enforcement in region I, in Boston; Steven Garvey, deputy director of compliance and enforcement, region I; Ralph Tippit, FEA's audit team leader at Exxon, region VI, in Texas; Paulette Barnhardt, former team leader for FEA's audit of American Petrofina, region VI; Carlos Moreno, auditor assigned to Texas, region VI; and Donald Mitchell, former FEA auditor of independent crude oil producers and natural gas plants, region VI.

We want to welcome all of you, and we would like to explain, for the record, that you are here at the request of the subcommittee, by subpena. Thus, we want to make it extremely clear to all that we want your statements and responses as a service to this subcommittee. Further, we want it understood within your agency that you are responding to our direct request.

We have had the assurance from Mr. Zarb—and I will include it at this point in the record—in an exchange of correspondence that spells out the various arrangements by which we agreed to have you come here as witnesses.

[The letters referred to above follow:]

U.S. SENATE,
Washington, D.C., April 24, 1975.

HON. FRANK G. ZARB,
Federal Energy Administration,
Washington, D.C.

DEAR MR. ZARB: Last year, the Subcommittee on Administrative Practice and Procedure began an intensive effort to examine the administrative practices and procedures of Federal regulatory agencies. The subcommittee has closely anal-

yzed various practices of the Civil Aeronautics Board and the Food and Drug Administration. In each case, our purpose has been to determine whether the Agency's practices and procedures are fair, open, impartial, efficient, and effective, and whether they comply with the requirements of the Administrative Procedure Act. A key focus of the subcommittee's inquiry has been the relationship between the procedures used in formulating policy and the effectiveness of the resulting policy.

In this context, the subcommittee has undertaken an inquiry into the practices and procedures of the Federal Energy Administration, with a view toward analyzing and evaluating the methods through which the Federal Government allocates scarce supplies, sets prices, and regulates competition in the energy field. This inquiry is part of the subcommittee's ongoing review of Federal regulatory practices and is important to fulfilling the charter given to the subcommittee by the Senate:

> "to make a full and complete study and investigation of administrative practices and procedures within the departments and agencies of the United States in the exercise of their rulemaking, licensing, investigatory, law enforcement, and adjudicatory functions . . . with a view to determining whether additonal legislation is required to provide for the fair, impartial, and effective performance of such functions."

It is my belief that this inquiry is particularly important in view of the current intensive effort by the Congress and the executive branch to enact new legislation to deal with the continuing energy crisis, and the resulting pressures to utilize streamlined procedures which may circumvent time-honored requirements of the Administrative Procedure Act.

Among the specific areas of inquiry which the subcommittee plans to undertake are the following:

1. The processes and procedures through which FEA allocation and rationing decisions have been made.
2. The practices and procedures used by the FEA national and regional offices in enforcing FEA's allocation and pricing regulations.
3. The methods used in obtaining data necessary to make informed policy decisions in the allocation and pricing areas.
4. The procedures used in awarding contracts and hiring consultants.
5. The degree to which there has been effective public input in the decision-making process through public hearings, notice and opportunity to comment, and institutionalized means of consumer representation.
6. The processes utilized in making energy pricing decisions.

Earlier this week, I wrote you requesting information and materials relating to the first two areas outlined above, on which I have asked the subcommittee staff to concentrate its initial effort. I appreciate the continuing cooperation the subcommittee staff has received from FEA personnel, and I welcome the opportunity to work with you further during the course of our inquiry and hearings into these areas.

With best wishes,

Sincerely,

EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure.

U.S. SENATE,
SUBCOMMITTEE ON ADMINISTRATIVE
PRACTICE AND PROCEDURE,
Washington, D.C., May 1, 1975.

Hon. FRANK G. ZARB,
Administrator, Federal Energy Administration, Washington, D.C.

DEAR MR. ZARB: I found our meeting yesterday to be constructive and informative. I am glad we were able to reach agreement on the questions that had arisen with respect to the current visit to FEA region VI by staff of the Subcommittee on Administrative Practice and Procedure and our general objectives relating to the subcommittee's inquiry. Specifically, as I understand our conclusions:

1. The Subcommittee staff will keep FEA informed of the areas of inquiry which the subcommittee is pursuing.
2. The staff will inform FEA of any serious charges made against it prior to such charges being made public in order to afford FEA an opportunity to respond.
3. The subcommittee staff will be given access to all FEA files, documents and records in the FEA national office and regional offices, and will be furnished

copies of any such materials on request. FEA personnel may keep records of materials that are examined or copied.

4. The staff will respect the confidentiality of proprietary information of a company under investigation in accordance with normal subcommittee procedures.

5. The staff will be given access to all FEA employees and personnel. Subcommittee staff currently visiting FEA region VI will work through a designated regional official in initiating first interviews with FEA regional employees. Subcommittee staff may, however, arrange further contacts or interviews directly with individual FEA employees or personnel. FEA employees may meet with subcommittee staff without other persons being present and at a mutually convenient time and place.

6. FEA region VI officials may suggest, but not require, that regional employees who meet with the subcommittee staff currently visiting the region report on the subject matter discussed. No disciplinary or other adverse action or sanctions of any kind shall be taken against any employee for meeting with or supplying information to subcommittee staff or for not supplying information to regional officials regarding contacts or meetings with subcommittee staff.

It is my belief that the procedures outlined above, if they are fully implemented on the regional level, will allow the subcommittee staff to conduct a thorough inquiry and will also provide FEA with a knowledge of the general framework of the subcommittee's inquiry. In the event that the subcommittee staff is not able to effectively carry out its inquiry under these guidelines, I will contact you in order to work out appropriate revisions of these procedures to enable the subcommittee to perform a full and fair inquiry.

I appreciate your cooperation and look forward to continuing to work with you during the course of our inquiry and hearings.

Sincerely,

EDWARD M. KENNEDY,
Chairman.

FEDERAL ENERGY ADMINISTRATION,
Washington, D.C., May 16, 1975.

Hon. EDWARD M. KENNEDY,
Chairman, Subcommittee on Administrative Practice and Procedure, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for your prompt letter of May 1 outlining your understanding of the agreements reached at our meeting on April 30. I believe you have accurately stated in your letter the substance of the meeting.

In order to facilitate your subcommittee's inquiry, Mr. Gorman Smith of my staff has taken the liberty of circulating your letters of May 1 and April 24, 1975, which outline the scope of your inquiry, to all 10 of FEA's regional administrators, under cover of his memorandum of May 2. I am enclosing a copy of Mr. Smith's cover memorandum to the regional administrators.

I sincerely appreciate the courtesy and cooperation you have extended to me and my staff in this matter. We are looking forward to a useful and productive inquiry into FEA's practices and procedures by your subcommittee.

Sincerely,

FRANK G. ZARB,
Administrator.

Attachment.

[MEMORANDUM]

MAY 2, 1975.

To: All Regional Administrators.
From: Gorman C. Smith, Assistant Administrator, Regulatory Programs.
Subject: Inquiry by Senate Subcommittee on Administrative Practice and Procedure.

This is to advise you that the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary under the chairmanship of Senator Edward Kennedy, has initiated an inquiry into certain of FEA's compliance and other practices and procedures. The attached letter from Senator Kennedy of April 24 outlines the scope of the subcommittee's inquiry.

With respect to this inquiry, Mr. Zarb met with Senator Kennedy to work out certain procedures to facilitate the subcommittee's inquiry and at the same time to reduce to the extent practicable any undue imposition on the time of FEA employees. That agreement is outlined in the attached letter from Senator Ken-

nedy of May 1. In the event your region is contacted by the subcommittee staff, you should act to implement the agreement as expeditiously as possible.

In order to maintain some reasonable management control over FEA's involvement in this investigation, we ask that you follow these elementary procedures:

1. You should not deny a subcommittee staff member access to any files, including those containing proprietary information. However, you should designate an FEA employee to keep a record of the files to which access has been given, in order to avoid later disputes as to whether access was provided. Moreover, you should keep an accurate record of documents that have been copied and provided to the subcommittee staff. This should be done by having a duplicate set of documents copied, which duplicate set should be sent to Jan Marfyak, Office of Regulatory Programs, Federal Energy Administration, 2000 M Street NW., Washington, D.C. 20508.

Any documents containing proprietary company data or relating to an ongoing investigation should be identified to the subcommittee as such and marked to indicate the necessity to protect the content. These should be transmitted to the subcommittee by cover memorandum, calling attention to the requirement to protect the confidentiality of the documents. The Subcommittee staff has agreed to acknowledge, in writing, receipt of any documents containing proprietary information and should be required to do so.

2. The subcommittee staff has agreed not to impose unduly on the time of FEA personnel. If, in your opinion, the subcommittee staff is making unreasonable demands upon the time of any member of your staff so as to seriously impair his ability to do his job, please contact Fred Stuckwisch, Associate Assistant Administrator for Compliance, at (202) 254–8740, who will bring the matter to the attention of the subcommittee's staff director in Washington.

Senator KENNEDY. We want to ensure that there is absolutely no action as a result of any of your testimony that could be interpreted as adverse to your own situations in the agency. I am certainly committed to assuring you of that with every degree of effort that I possibly can. I am sure that the other members of this committee would share that same commitment.

I will ask you all to take the oath, as we asked the other witnesses yesterday. So if you would be kind enough to raise your hands, "I swear the testimony I am about to give will be the truth, the whole truth, and nothing but the truth, so help me God."

Mr. MALOY. I do.

Mr. GARVEY. I do.

Mr. TIPPIT. I do.

Mr. MORENO. I do.

Mr. MITCHELL. I do.

Ms. BARNHARDT. I do.

Senator KENNEDY. Mr. Maloy.

STATEMENTS OF PAUL MALOY, DIRECTOR, COMPLIANCE AND ENFORCEMENT, REGION I, FEDERAL ENERGY ADMINISTRATION; ACCOMPANIED BY STEVEN GARVEY, DEPUTY DIRECTOR, COMPLIANCE AND ENFORCEMENT, REGION I; RALPH TIPPIT AND CARLOS MORENO, FEA AUDITORS, REGION VI; DONALD MITCHELL AND MS. PAULETTE BARNHARDT, FORMER FEA AUDITORS, REGION VI

Mr. MALOY. Yes, sir.

Senator KENNEDY. I would like to hear your views on the issues we have discussed at these hearings, as they apply to New England. I understand that in New England the FEA compliance and enforcement program focuses on wholesalers and retailers. Is that correct?

Mr. MALOY. Yes, it is, Senator, to the extent we can, with the limited staff we have. At the present time, we have on board 11 auditors and 13 investigators. There are approximately 22,000 firms in New England that are subject to the regulations that we have to enforce.

Senator KENNEDY. Bring the microphone up a little closer.

VIOLATION RATE IN NEW ENGLAND ABOUT 33 PERCENT

Mr. MALOY. There are about 22,000 firms in New England subject to the regulations. Our experience has shown a violation rate that has held pretty consistently at about 33 percent. In projecting that out, we figure about roughly 6,000 of those firms would be in violation, in the amount that we project similarly, in the neighborhood of $50 million. To deal with that problem, we have only 11 auditors and 13 investigators to do those audits. Of necessity, we have had to limit the number of firms that we can do. We have under investigation at the present time three large wholesalers. Then we have three people, I believe, assigned full time to the utilities project. The remaining staff work on small heating oil dealers and gasoline stations.

Some of the problems we have never felt we had an adequate staff to ensure that overcharges that Dallas would uncover at the refineries are actually refunded back to the customers in New England. In order to do that, we feel we have to have a much larger staff than we have, and audit far more firms than we have been able to do today, so we can at least let the public know we are out there. There is a good chance that anyone who is not complying will be caught and made to comply by refunding all the overcharges to the public.

NEW ENGLAND HAS ONLY ONE-THIRD THE NECESSARY MANPOWER. NO GUIDELINES FOR WHOLESALE RETAIL AUDITS

Senator KENNEDY. Have you requested additional manpower?

Mr. MALOY. Yes, starting in September 1974, when they first proposed from Washington to cut the staff, we raised our objections and submitted justifications for staff level of approximately 100 people from New England. We did that in September, October, November, January, March, April, and May.

Senator KENNEDY. How many do you have now?

Mr. MALOY. Right now we have 32 on board. Of that, only 23 are out doing audits.

Senator KENNEDY. You have one-third of the manpower which you think is necessary?

Mr. MALOY. Right.

Senator KENNEDY. How many auditors would you need?

Mr. MALOY. Steve, do you have something?

Mr. GARVEY. We have computed 80.

Senator KENNEDY. You can supply that for the record. I would like to move on.

Senator KENNEDY. Can you tell us what guidelines you have with regard to procedures in terms of compliance?

Mr. MALOY. Principally, we have guidelines that have been furnished on the refinery audits. We have one refinery in New England, out in Springfield, and we have had some guidelines furnished to utility investigations. But that is not very helpful to us in New Eng-

land. Most of our work is at the wholesale and retail level. We have never received any guidelines or manuals in that area.

Senator KENNEDY. What do you do?

Mr. MALOY. We have developed our own procedures in the region.

Senator KENNEDY. Is that not better?

Mr. MALOY. It is better than nothing, yes.

Senator KENNEDY. Is it not better to have regional procedures targeted on the problems in a particular region?

Mr. MALOY. Yes, it is good to have them focused on regional problems, but there needs to be some uniformity across the 10 regions, so that if we are dealing with a major firm in New England, they are not going to be able to get one answer from us and another one from eight other regions. There is no uniform guidance that has been supplied through the regions.

NATIONAL OFFICE HAS NOT RESPONDED TO MANY REQUESTS

Senator KENNEDY. Have you asked for clarifications?

Mr. MALOY. Yes; we have, starting in June 1974, we submitted weekly and biweekly and monthly memos where we posed questions and problems to the national office, outlining what we felt we needed in various areas. Back in June 1974, we pointed out the need for coordination with the refinery audit people so we would know what they are doing and be able to supplement their work in New England by following refunds back through the distribution chain to the customers. That has never been done. We've never received anything along those lines.

Senator KENNEDY. Did you get any response to these requests?

Mr. MALOY. Yes. We got some responses. In January 1975 we submitted a laundry list.

Senator KENNEDY. You first submitted these requests in June 1974.

Mr. MALOY. Correct. From June, on a regular weekly or biweekly basis, we submitted questions; many of them were never answered.

Senator KENNEDY. Now, did some of these questions ask for clarification of procedures and guidelines in areas of enforcement and compliance?

Mr. MALOY. Yes, sir. One of the areas that's been outstanding for the longest time is a Cost of Living Council form which is required to be filed by home heating oil dealers on a monthly basis, form 92. It's the basic auditing document when we go out auditing home heating oil dealers. There have been continual attempts on our part to get a clarification of how that form was to be filed, how it was to be prepared, and that issue has never been resolved. It's over a year old at this time.

Senator KENNEDY. Are there other such issues that have not been resolved?

Mr. MALOY. Yes.

Senator KENNEDY. You can submit those for the record.

Senator KENNEDY. What impact has this lack of priorities and lack of response to questions had on the auditors?

Mr. MALOY. The auditors in New England that we did have on board—at one time we had around 35, I believe—felt the agency had done nothing but provide token enforcement for the regulations. And since most of them had reemployment rights to other agencies, they

have exercised those rights, and gone back to work, principally for the Internal Revenue Service.

Senator KENNEDY. You lost some good people?

Mr. MALOY. Yes, we lost some of my top auditors, and the work that they had in process has gone undone because we don't have enough auditors to reassign.

Senator KENNEDY. Besides the impact on the morale of the agency, what else? What about its impact on efficiency in terms of failing to provide guidelines, and its impact on fairness in terms of the standards that should be used by different auditors against different independent oil distributors?

Mr. MALOY. In the New England area, I think we have had some uniformity, because we have developed our own audit plan, and we've, at least in that region, treated the firms on an equal footing.

NO PENALTIES COLLECTED FOR PRICE VIOLATIONS IN NEW ENGLAND

Senator KENNEDY. What is your record, in terms of collecting penalties?

Mr. MALOY. We have not collected any penalties for pricing violations in the region.

Senator KENNEDY. What is that?

Mr. MALOY. Well——

Senator KENNEDY. Is that because we are so good up there in New England?

Mr. MALOY. No, it's not at all.

Senator KENNEDY. Tell us about ourselves, then.

Mr. MALOY. There are no written guidelines on when to seek penalties. There has been no delegation of authority to the regions to go out and compromise penalties. In the data that has been furnished by the national office of statistical types of reports, we have never seen penalties asserted against the larger refineries, and we made our own decision in the region that we were not going to assess penalties on small firms, when the large, major firms were not being penalized by the refinery audits.

Senator KENNEDY. Can you make any kind of general assessment as to the kind of mistakes that are made? What percent are the result of confusion and misunderstanding of whatever kind of guidelines there are, and what percent are basically due to culpability?

Mr. MALOY. I think the real culpability is firms don't take the agency seriously, so they don't bother to find out what the responsibility under the law is. Until we get——

Senator KENNEDY. Do you think that is a general impression?

Mr. MALOY. Yes, it is.

Senator KENNEDY. How do you think you can change that?

Mr. MALOY. I think we can change it by strengthening the compliance and enforcement staff at all levels, not just at the refinery level. I think that regions ought to be made party to the decisionmaking process when priorities are established for the compliance program. That has never happened. Decisions are made unilaterally in Washington, and we're told to implement them in the best way we can.

Senator KENNEDY. I'd like to turn now to the four auditors from Texas, from region VI, and ask if you have had the same kind of problems in your region. Also, in what areas do you feel more adequate guidelines and procedures are needed?

Mr. Tippit.

STATEMENT OF RALPH TIPPIT, AUDIT TEAM LEADER AT EXXON, REGION VI, FEDERAL ENERGY ADMINISTRATION

Mr. TIPPIT. I endorse the things he has just stated.

Senator KENNEDY. Do you know Mr. Maloy?

Mr. TIPPIT. No, I have never met him.

Certainly additional staffing is an absolute prerequisite to accomplish our goal.

Senator KENNEDY. Have you made requests for additional staffing?

Mr. TIPPIT. Informally, I have made requests for additional staffing. But there was no coordinated effort since last summer to determine what the staffing pattern should be, to my knowledge. It may have happened at regional, national level, but I'm not aware of it.

Senator KENNEDY. But you need more personnel, is that right?

Mr. TIPPIT. I would need at least six more for my particular auditing.

Senator KENNEDY. For your particular audit at Exxon.

Mr. TIPPIT. For the Exxon audit, I would need 10 people, at a minimum.

ONLY ONE FEA AUDITOR ASSIGNED TO EXXON

Senator KENNEDY. You were the only auditor assigned to Exxon for a period of time. Is that correct?

Mr. TIPPIT. Right. Roughly 2 months.

Senator KENNEDY. From when to when?

Mr. TIPPIT. This would have been, I guess, the early part of March, and I guess, most of April.

Senator KENNEDY. How did it come about that you were the only FEA auditor working at Exxon for a 2-month period?

Mr. TIPPIT. There was one other auditor originally assigned to Exxon when I began in early February. She was reassigned as group conferee almost immediately after I took over the audit of Exxon.

Senator KENNEDY. So one was assigned and then she was transferred and then you were assigned.

Mr. TIPPIT. Yes, right.

Senator KENNEDY. That is a pretty big company, is it not?

Mr. TIPPIT. I appreciate the confidence the agency has. I informed the agency I could not accomplish what was needed by myself.

Senator KENNEDY. Given what you were told to do, how many auditors would you need to accomplish it?

Mr. TIPPIT. I would have expected not less than ten, to do what is absolutely mandatory to be accomplished there.

Senator KENNEDY. Did you ever indicate that you would need that number to do the job?

Mr. TIPPIT. I've talked to my supervisor. I never had an opportunity to do it formally until the day before yesterday.

Senator KENNEDY. How is that?

Mr. TIPPIT. I had a discussion with Mr. Stuckwisch and he asked me what we would need to do a bangup job there.

Senator KENNEDY. When was that?

Mr. TIPPIT. The day before yesterday.

Senator KENNEDY. What was the first time that you were asked?

Mr. TIPPIT. At the area office level, I had informally mentioned to my supervisor that we needed more people. And even though there were three more people that were assigned later to the team, they were temporarily assigned to the utilities audit.

Senator KENNEDY. What kind of a job can one auditor hope to do in a situation like that? How long would it have taken you as an individual?

Mr. TIPPIT. There is no way I could have accomplished the goal. I spent half of my time answering telephone calls and requests by the regions and complaints.

Senator KENNEDY. Did you have any sort of deadlines, things that you had to perform by a certain time?

Mr. TIPPIT. The only deadlines were on some major, one major complaint and one audit module that was requested recently.

Senator KENNEDY. And you were given deadlines to complete those, were you not?

Mr. TIPPIT. Right.

EXXON AUDIT PROVIDED VERY SHALLOW EXAMINATION

Senator KENNEDY. Did you, as a professional, feel that you had sufficient time in which to complete these audits competently?

Mr. TIPPIT. I mentioned to my supervisor that by GAO standards, I was former GAO, it would never pass inspection. For the amount of time we had to do the job, we did it as fast as we could. Roughly 10 percent as much time was available as I would have expected to do a professional job.

Senator KENNEDY. What would that be in terms of hours?

Mr. TIPPIT. This one particular audit module I anticipated that approximately 700 hours would have been required to accomplish and do it on a professional basis.

Senator KENNEDY. And how much time did you have to spend?

Mr. TIPPIT. We had 54 hours audit time available.

Senator KENNEDY. What would that mean in terms of the quality or the accuracy of the work product?

Mr. TIPPIT. It would provide very shallow examination with the result in quality being insufficient as far as I am concerned.

Senator KENNEDY. What kind of reaction did you get from your supervisor when you said you needed the additional personnel and you did not have enough time to do an adequate job?

Mr. TIPPIT. My supervisor sympathized with me. He said that he recognized that additional people were needed. He would do the best he could as soon as other priorities permitted.

Senator KENNEDY. Were you given all the information that was necessary at Exxon to do your job?

Mr. TIPPIT. Do you mean by the company?

Senator KENNEDY. Yes.

Mr. TIPPIT. They have been reluctant to part with the information.

Senator KENNEDY. I suppose that is not an unnatural kind of reaction, or is it?

Mr. TIPPIT. The information is beginning to flow. Until recently, there was relatively little information, audit information.

Senator KENNEDY. Were you able to travel around to collect information you thought was necessary for your audits?

Mr. TIPPIT. I was informed last December that our region had used up most of its travel funds, and that only emergency travel would be authorized from that point on.

Senator KENNEDY. How did that affect your audit?

Mr. TIPPIT. It eliminates reviewing for other locations where pertinent accounting information, more or less subsidiary accounting centers are located in the case of Exxon. But in the absence of having available funds, I have programed trips for the first quarter of fiscal 1976, in the event that travel funds are available then.

Senator KENNEDY. Mr. Moreno, according to information provided by FEA, there have been two or three auditors, including yourself, assigned to Texaco. Have there in fact been two or three auditors working at the Texaco audit?

STATEMENT OF CARLOS MORENO, AUDITOR AT TEXACO, REGION VI

Mr. MORENO. That is correct sir.

TEXACO AUDIT HAS ACCOMPLISHED VERY LITTLE

Senator KENNEDY. How much has the Texaco audit team been able to accomplish over the last four months?

Mr. MORENO. Very little, for example on February 1, 1975, we had a rotation of team leaders. Every audit team has a team leader. On February 1 or thereabouts that week, we had a rotation of team leaders.

What had happened subsequent to that is that it takes each team leader from 30 to 90 days to move out with the program. The staffing at that time consisted of three auditors.

Shortly thereafter, I would say about March 24, 1975, I was detailed to a special project for approximately three weeks. That left two auditors at Texaco. One week later, one of the auditors was relocated or moved to another audit team. That left one auditor at Texaco, and he was the new team leader, who, I have said, he would take anywhere from 30–90 days to move out with the program.

So that was on or about March 31, 1975, which left that one new team leader there. I returned to the Texaco audit team from my detailed three week assignment on or about April 15, so that now we had two auditors on the Texaco team.

It was on April 4 that we had one other auditor assigned. Which, now we have three assigned to the Texaco audit team. That individual, that auditor, was within 2 weeks assigned to a project on utilities. So, again, that left one. And so far, in the last 5 months, we have done very, very little with regard to the audit at Texaco.

Senator KENNEDY. That is the point.

How would you evaluate the effect of this on the review of Texaco?

Mr. MORENO. Up until the time——

Senator KENNEDY. Briefly.

Mr. MORENO. Up until the time that we came to February 1, I thought that with the manpower we had we were doing an adequate job. Subsequent to that, we had not been doing an adequate job as a result of our efforts because of lack of manpower.

Senator KENNEDY. Miss Barnhardt, while you were at FEA, were there cases you worked on where you felt there were undue delays in resolving the case, after a violation was discovered?

STATEMENT OF MS. PAULETTE BARNHARDT, FORMER AUDITOR AT AMERICAN PETROFINA, REGION VI

Ms. BARNHARDT. Yes, a particular small refinery, before my assignment to the larger refinery, where the filled work was completed, closing conference was held with the company in September 1974.

It took until approximately 2–3 weeks ago to close that case out because of procedure delays.

Senator KENNEDY. Why? What can you tell us about the reasons for the delay?

Ms. BARNHARDT. Whenever we held the closing conference the company was willing to enter into a compliance agreement.

We came back to the office. We were told that there were now, new administrative remedies. We had to prepare a remedial settlement agreement. We were then told that this was not effective. We had to go to what they call a notice of proper violation.

We went that way, had subsequent conferences with the company, they took the corrective action necessary and were willing to enter into what they call a remedial settlement agreement. This was drafted.

And then subsequently we were told that we would have to go to a compliance agreement, which brought us exactly to where we had been September 12, 1974.

Senator KENNEDY. While you were audit team leader at American Petrofina, did you feel you had a sufficient number of auditors to perform a thorough audit?

Ms. BARNHARDT. No.

Senator KENNEDY. How many did you have? And how many would you have needed?

Ms. BARNHARDT. I had two. There was one fellow who was working on an audit module, entirely. The other fellow was working on congressional complaints.

NO GUIDELINES FOR COLLECTING PENALTIES

Senator KENNEDY. Mr. Mitchell, FEA indicated that in region VI no penalties have been collected against small independent producers for violations of the regulations.

Do you know why this has been the case?

STATEMENT OF DONALD MITCHELL, FORMER AUDITOR OF CRUDE OIL PRODUCERS AND GAS PLANTS, REGION VI

Mr. MITCHELL. We had no guidelines from the national office as far as penalties were concerned.

I, myself, never advanced any penalties. I was specifically told the penalties were the sole determination of counsel, and they were the

only ones that could mitigate penalties, or assess if you will, penalties, and that the auditors had nothing to do with them. Then again, I felt, that if a major refinery were going penalty free, I thought it not quite right to penalize some oil producer out there in west Texas.

Senator KENNEDY. Why not?

Mr. MITCHELL. Well, because I thought that——

Senator KENNEDY. Maybe the refiners are all complying, and that fellow out in west Texas is a rascal.

Mr. MITCHELL. No, sir, I cannot quite agree with that, because I thought FEA was a national organization, and they should have national policies. And if a property is ill-defined by an independent producer, then such a property would be ill-defined by a major, the same type of violation would occur in its place.

PRODUCERS TO AUDIT WERE CHOSEN FROM THE YELLOW PAGES

Senator KENNEDY. Since there are thousands of independent producers, how did you and other auditors determine which producers to audit?

Mr. MITCHELL. I cannot say how others decided which producers to audit.

I know in several instances I went to the yellow pages.

Senator KENNEDY. The yellow pages?

Mr. MITCHELL. Yes, sir.

Senator KENNEDY. Do you mean the telephone company yellow pages?

Mr. MITCHELL. Yes, Bell telephone. You look under "Producers" and go down the list and see what the name is.

Senator KENNEDY. Did the national office give you this kind of instruction?

Mr. MITCHELL. I do not know what the national office did. I was at one time assigned a task force working on a producer type audit. Shortly after I went to Texas, I had to sign a written statement that I would no longer communicate with the national office.

So if the national office did something, I certainly did not know about it. And if I received a phone call from the national office, I was instructed that I could not talk to them.

Senator KENNEDY. Was this true of all the others in region VI?

Mr. MITCHELL. As I understood it, most of the people had to sign it. I know I specifically did not like to have to sign it. But the supervisor made quite a to do about it. And finally I ended up signing it. I understood I was not supposed to talk to Washington under any circumstances.

Senator KENNEDY. Were you given this, Miss Barnhardt?

Ms. BARNHARDT. Yes.

Senator KENNEDY. Mr. Tippit?

Mr. TIPPIT. We had not a prohibition, but we were requested to ask permission of our area supervisor, who would in turn ask permission from a regional supervisor if we could talk to them.

Senator KENNEDY. Mr. Moreno?

Mr. MORENO. Yes, that is true also in my case.

Senator KENNEDY. What sort of problems did you experience in terms of delays in getting responses due to this type of procedure?

What kind of things would you want to get resolved that you could not get resolved?

Ms. BARNHARDT. I was only at this particular company for a short time. So, most of the delays I was confronted with were delays that I had inherited. We were precluded from going to the analysts, but I brought it up with my supervisor and he was able usually to get in touch with somebody from the national office.

Senator KENNEDY. Have all of you worked in agencies in the Government other than the FEA?

Ms. BARNHARDT. Yes.

Senator KENNEDY. Is this the usual kind of procedure followed in any of the other agencies that you have worked in?

Mr. MORENO. I worked formerly with the Internal Revenue Service. As I recall, if we had a need, we could call the national office. However, most of our problems could be resolved within our own area.

Senator KENNEDY. Mr. Tippit?

Mr. TIPPIT. I was with the National Aeronautics and Space Administration. I had no restraints on my telephone calls.

Senator KENNEDY. Miss Barnhardt?

Ms. BARNHARDT. Yes.

Senator KENNEDY. Which agency were you with?

Ms. BARNHARDT. IRS. And, like Mr. Moreno said, if there was a need, we could obtain the information.

Senator KENNEDY. In view of FEA's procedures, or lack of procedures, and the regulations or lack of regulations, in terms of carrying forward a legislative intent what advice would any of you give to FEA as to how FEA's enforcement program could be improved? Mr. Tippit?

Mr. TIPPIT. I would suggest an improved communication channels that provided for feedback of information: that the troops had received the information, I understood it and communicated it back to the beginning point, the national office, that it was received, understood, and how it would be carried out.

Senator KENNEDY. What about that, Ms. Barnhardt?

Ms. BARNHARDT. I think a major improvement that would be made would be to have counsel be performed in strictly advisory capacity and out-of-line functions.

Senator KENNEDY. Mr. Mitchell?

Mr. MITCHELL. I think FEA has to define its goals, Senator. I think that if its goals is to enforce these violations, then they should enforce these violations.

They should not exercise the policy of when the auditor finds a violation, immediately looking through the regulations and trying to find some way to penalize the auditor rather than the firm. I suggest, with regard to that, changing the regulations that came out, making some regulations on gas plants retroactive, thereby reducing sizably the amount of violations.

Senator KENNEDY. Have any people ever come out from the national office and sat down with you and rapped with you about ways of effectively dealing with some of these problems?

Mr. MITCHELL. No, sir.

Senator KENNEDY. Do you think that would be useful?

Mr. MITCHELL. Yes, sir. There must be communication between the national office and the regions.

Senator KENNEDY. What about Mr. Maloy? Would that be helpful?

Mr. MALOY. Yes, I think it would be very helpful to have people that are making decisions that affect the compliance program in Washington knows what's going on in the regions.

NO CLEAR INTENT TO HAVE A STRONG COMPLIANCE PROGRAM

Senator KENNEDY. Could you characterize the kind of job that can be done? Mr. Maloy, given the type of situation that you described here—the limitations of certain information and the lack of clear national guidelines—how would you characterize FEA's performance, in terms of carrying forward the mandate of the Congress?

Mr. MALOY. It appears to us in New England that the whole policy of the Agency has been to deregulate. There has never been any clear expression of intent to have a strong compliance program. I think that none of the auditors in the field believe that the Agency wants to enforce its own regulations.

AUDITORS AND FIRMS DO NOT UNDERSTAND THE REGULATIONS

Senator KENNEDY. Mr. Garvey, what do you think?

Mr. GARVEY. Our audit staff has one, big problem, and that is understanding the very complex regulations. The firms do not understand it. Our auditors have problems with it. It puts us at loggerheads with every company of any size that we audit.

The problem is, and should be, that the national FEA should be defining and interpreting what is to be accomplished through the regulations. They could come out and do something like that, offer firm guidelines. In addition, it would be very productive.

Senator KENNEDY. We are going to have to recess. When that bell went off it meant that we are nearly out of time. I think what we have been attempting to do is to find out about FEA's efforts to carry forward the mandate of the Congress, the legislative intent.

You have heard some of the statements and comments, and the testimony of Mr. Zarb and others, as to how they feel this is being done. We have reviewed various internal agency memorandums that raise many of the troublesome questions and issues which you have commented on here today; and which, I think, raise various questions about the effectiveness of the agency in carrying out the Congressional mandate.

We have heard from people who work out in the field about their sense of frustration and confusion over the lack of clear and definitive goals for the Agency.

It may very well be that the people in the national office think they have provided the rules, regulations, and guidelines necessary to carry forward the Congressional intent, but it is quite clear that it is not getting out to the field.

As we have seen in the course of our review, in far too many instances there is no real clear direction given to those out in the field.

We want to work with FEA to help resolve these problems that we have discussed during the course of our hearings. We want to indicate

appreciation for your comments here and your responses to our questions.

I think we ought to set some target dates, from a few weeks at the outset to a couple of months, for the Agency to establish very clear, precise, and understandable guidelines and regulations in these areas.

We want to work with the Agency, and with the people out in the field, to correct these deficiencies.

We want to thank all of you very much for your appearance here. Your comments have been very helpful and constructive to us, and we will be working with you and the Agency in attempting to remedy these problems so that you people can perform your job.

I have been greatly impressed, as the chairman of this subcommittee, with the enormous dedication and quality of the people that work in the Federal Government. I have found it in the Food and Drug Administration, in the CAB, and in all the various agencies. In so many instances, the failures of many of our agencies are not due to the quality or the caliber or the dedication of the people, but are due to other problems, whether it be a lack of charity in administrative or policy decisions, or wrong policies.

We very much appreciate your appearance here today and the quality of your testimony. I hope we can be helpful to you and make this Agency the kind of instrument that will protect the consumer and provide help and assistance to the petroleum companies so that they can meet their responsibilities for our national interests.

I want to thank you again. Because of our time situation, we will not be able to hear from the other witnesses that were scheduled.

Senator KENNEDY. This subcommittee stands in recess.

[Whereupon, at 10:40 a.m., the subcommittee recessed, subject to the call of the Chair.]

FEA SUBMISSION TO THE SUBCOMMITTEE ON PENALTIES

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

August 12, 1975

MEMORANDUM TO: All Regional Administrators

FROM: Robert E. Montgomery, Jr. REM
General Counsel

Gorman C. Smith
Assistant Administrator for
Regulatory Programs

SUBJECT: FEA Policy on Civil Penalties

The following represents the policy of the FEA regarding procedures applicable to the collection of civil penalties where violations of FEA regulations have been determined.

Section 5(a)(1) of the Emergency Petroleum Allocation Act of 1973 provides that the enforcement provisions contained in "Section 205 through 211 of the Economic Stabilization Act of 1970 . . . shall apply to the regulations promulgated under Section 4(a) . . . and to any action by the President . . . under this act . . . ." Section 208 of the Economic Stabilization Act provides as follows:

"(a) Whoever willfully violates any order or regulation under this title shall be fined not more than $5,000 for each violation.

"(b) Whoever violates any order or regulation under this title shall be subject to a civil penalty of not more than $2,500 for each violation."

Guidelines and procedures with respect to willful violations under subsection (a) are dealt with in a separate policy guideline recently issued. This memorandum relates only to the civil penalty provisions of Section 208(b).

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Standards for Determining Whether
a Civil Penalty Should Be Sought

Although the language of Section 208(b) could be read literally to apply automatically to any violation regardless of the surrounding circumstances, FEA will consider civil penalties to be appropriate only where the violation involves some degree of wrongful conduct on the part of the violator. Such "wrongful conduct" should not, however, be confused with the "willful violation" criminal standard contained in Section 208(a).

A civil penalty should be sought in all cases where there is no significant evidence that the violation was willful, but, on the other hand, it appears to have been more than the product of an honest mistake. This category covers a wide area of conduct, and it is recognized that a judgment must be made with respect to each individual case. Instances falling within the category where a civil penalty is warranted and should be sought are the following:

1. violation of a simple, clear regulation;

2. violation of a complex but nevertheless well-known provision of the regulations with respect to which the FEA has provided the industry with much guidance;

3. repeating, even if inadvertently, a practice which the party was previously notified by FEA constitutes a violation;

4. failure to prepare adequate records and otherwise failing to take reasonable precautions that would prevent inadvertent violations; and

5. a violation that is believed to have been willful but with respect to which there is insufficient evidence to support a criminal prosecution.

On the other hand, the "wrongful conduct" standard applicable to civil penalties would exclude violations which are the product of an honest mistake under circumstances where, in FEA's view, the offending party exercised reasonable care to avoid the violation. Examples of such honest mistakes would include violations that are the result of:

1. an erroneous but reasonable interpretation of an ambiguous regulation;

2. good faith reliance on informal advice of an FEA representative;

3. circumstances beyond the control of the party found to be in violation; or

4. an inadvertent mathematical or accounting error.

Of course, the party asserting that one of the above factors gave rise to the violation will be required to substantiate such assertion.

In cases where the violation has been found to fit in the "honest mistake" category, the appropriate remedy is:

1. an assurance that the violation will not be repeated; and

2. restitution to parties wronged by the violation (refund or rollback); or

3. correction of the violation through a bank adjustment (where the violation did not result in financial harm to any party).

However, since the violation resulted from an honest mistake, a penalty is not appropriate. This policy is in keeping with the practice of other Federal agencies. It is also a commonsense interpretation of the term "civil penalty," as used in the statute, which carries a connotation of some unjustified act deserving of punishment.

In every case where a violation has been determined not to warrant a penalty, the compliance file should contain a recitation of the basis supporting that determination.

Procedures for Seeking Civil Penalties

The FEA does not have statutory authority to itself impose penalties upon a party found to be in violation of its regulations. Only a federal district court can impose either civil or criminal penalties on an unwilling party,

and it does so in a suit brought on behalf of the FEA by the Department of Justice.

However, many companies found to have violated the regulations are willing to pay a civil penalty in an appropriate amount and save themselves the trouble and expense of litigating the matter in a federal court. Therefore, pursuant to 10 C.F.R. § 205.202(c)(2), "when the FEA considers it to be appropriate or advisable, the FEA may compromise and settle and collect civil penalties."

It is extremely important to distinguish between the remedy imposed for a particular violation (e.g., refund, rollback, bank adjustment) and the penalty that may be warranted as a result of the violation. The compliance remedy corrects the harm caused by the violation. Such a remedy is not, however, and should not be considered to be, a penalty. Similarly, a civil penalty is not a substitute for a remedy and should not be considered to be a "refund" to the U.S. Treasury on behalf of victims that are not identifiable. A civil penalty is a form of punishment which does not directly aid the victims of the violation but is designed as retribution and a deterrent against future non-compliance with FEA's regulatory requirements. The FEA can enter a binding order imposing a remedy, but it can only "compromise" a penalty.

Accordingly, the first responsibility of compliance personnel is to determine whether a violation has occurred and to fashion an appropriate remedy. Compliance personnel should to the extent possible avoid discussing potential penalties with a party under investigation until a final determination has been made with respect to the finding of a violation and the appropriate remedy. This stage of a case is normally reached upon the issuance of a remedial order ("RO") or upon the execution of a consent order. In no event should the determination of a violation or the imposition of a remedy be influenced by penalty considerations. At the same time, it is important not to lead a firm to believe that its execution of a consent order will absolve it of the additional responsibility for civil penalties. Additional guidance on handling penalty negotiations where a case is concluded by a consent order will be provided in the near future.

In some cases, of course, it is impossible to avoid the discussion of penalties before final resolution of the factual and legal issues and the remedy. In some cases it may even be possible or desirable to resolve both remedy and penalty issues at the same time. In all such instances, however, care should be taken that remedies and penalties are treated as separate issues and that one is not considered a substitute for or compromise of the other.

An offer to compromise civil penalties can be initiated orally or in writing, but, as is the case with respect to all significant oral communications involved in compliance proceedings, an oral offer to compromise should be confirmed in writing. Offers to compromise civil penalties should notify the firm of the violation to which the offer relates, the maximum amount of civil penalties to which the firm is subject (i.e., the total number of violations (counting each day of violation as a separate violation per § 205.202(c)) times $2,500 each), and the fact that the FEA is willing to consider an appropriate lesser amount in compromise in lieu of referring the matter to the Department of Justice for collection of a civil penalty. A sample letter offering to compromise civil penalties is attached. Under the Regional Administrators' delegations of authority, compromises of civil penalties can be entered into only after appropriate consultation and review by the Regional Counsel or his delegate. The Regional Counsel should also be consulted at other stages in the compromise process, including preparation of the solicitation letter.

If efforts to compromise civil penalties at an acceptable amount are unsuccessful, and if the regional office is of the view that a civil penalty should be imposed, the case should be forwarded to the General Counsel in precisely the same manner as criminal cases are to be forwarded to the General Counsel for review and referral to the Department of Justice.

Standards for Determining the Appropriate Amount of a Civil Penalty

The term "compromise" as used in § 205.202(c)(2) is not intended to imply that FEA will accept penalties of a lesser amount than is warranted for a particular violation. Rather, it is intended to confer upon FEA officials the power to agree to settle a penalty matter at a figure less than the statutory

maximum without the necessity of resorting to full-scale judicial procedures. The amount of the penalty that will be deemed acceptable should as a general rule approximate the amount that a court would be expected to impose if the case were formally prosecuted by the Department of Justice.

While it is impossible to predict with any precision how much of a penalty a particular court would impose for a specific violation, it is possible for FEA to take into account the same factors and criteria that are normally utilized by a court in reaching a penalty decision. These considerations include the following:

1. the financial condition of the offender;

2. the period of time during which the violation persisted;

3. the effort made by the offender to avoid non-compliance;

4. the financial harm caused to customers or the public as a result of the violation;

5. the magnitude of the violation;

6. the overall compliance record of the offender;

7. the extent to which the offender benefited financially from the violation;

8. the necessity for a deterrent to future such violations by the same firm or other firms;

9. the effectiveness of other remedial action imposed because of the violation.

A normal rate of interest on the amount of an overcharge is only one of several possible measurements of the amount by which the company profited from the violation (item 7 above). However, even in those cases where the time value of money is the most appropriate measure of the extent of financial benefit to the company, the other considerations listed above must be taken into account in the determination of an appropriate penalty.

In addition to these considerations, careful evaluation must be made of the factual and legal soundness of the case, since the Government would have the burden of proof in an actual civil penalty suit. This evaluation should be made with the assistance of local counsel. In order to apply properly the various criteria enumerated above, the party found to be in violation may be invited to submit information relevant to these determinations. Consideration may also be given in determining the acceptability of a penalty amount to the cooperativeness of the party during the course of the investigation.

Attachment

SAMPLE SOLICITATION LETTER

Dear :

On ____________________, 1974, the Federal Energy Administration issued a Remedial Order to X. The Order constituted a determination that X had:

In addition to the remedial steps ordered to be taken, the Order indicated that X was subject to the penalties and sanctions enumerated in Part 210 of the FEA regulations. FEA estimates that X may be adjudged to be liable for civil penalties, in the maximum amount of $______________, calculated on the following basis:

Based on an analysis of the circumstances of the violation in this case, FEA is willing to consider, and therefore solicits, an offer in compromise of the penalty. Please note that an offer to compromise does not constitute an admission or denial of the violation. However, a successful compromise of civil penalties will preclude referral of such a case for action in the appropriate United States District Court.

FEA is receptive to the submission of, and will carefully consider, any information or material bearing on the findings contained in the Remedial Order, to the extent that such data denies, explains or mitigates the violation. Such information may be presented in writing or in the context of an informal conference convened to discuss compromise of civil penalties.

Should you wish to submit an offer of compromise, or arrange an informal conference to discuss possible compromise of civil penalties, please contact:

If FEA fails to hear from you within fourteen days of receipt of this letter, it will be assumed that X has no interest in the possibility of compromising civil penalties.

Sincerely,

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

August 12, 1975

MEMORANDUM TO: All Regional Administrators

FROM: Robert E. Montgomery, Jr.
General Counsel

Gorman C. Smith
Assistant Administrator for
Regulatory Programs

SUBJECT: Referral of Criminal Cases to the Department of Justice

The purpose of this memorandum is to provide you and your staffs with guidance on procedures to be followed in the event that a compliance investigation uncovers evidence of possible criminal conduct. A separate memorandum dealing with civil penalties in compliance cases will be issued in the near future.

Authority for the imposition of criminal penalties for violations of FEA regulations is found in the Economic Stabilization Act of 1970. Section 208(a) (as incorporated by the Emergency Petroleum Allocation Act of 1973) provides:

> "Whoever willfully violates any order or regulation under this title shall be fined not more than $5,000 for each violation."

The essence of a criminal violation of FEA regulations is, therefore, a "willful" intent to commit the violation.

The meaning of the word "willful" depends in large measure upon the facts of a particular case. However, in general a violation is willful if the subject, having a free will and choice, either intentionally disregarded the regulations or was plainly indifferent to their requirements. United States v. Futura, Inc., 339 F. Supp. 162, 168 (N.D. Fla. 1972). While the government does not have to prove an evil motive or purpose, it does have to prove that the act

was purposefully done with knowledge that it was unlawful and was not merely negligent or inadvertent. Mere proof of a violation does not give rise to the inference that the violation was willful, but willfulness can be proven by circumstantial evidence.

In addition to willful violations of FEA regulations and orders, FEA investigators have occasionally found evidence of other kinds of criminal activity. The most common other crime likely to be encountered is the submission of falsified information to an FEA investigator in order to cover up a violation of the regulations. In addition to possibly violating certain sections of FEA regulations (e.g., §§ 210.92; 211.223; 212.170), the knowing submission to the FEA of false information is a violation of 18 U.S.C. § 1001, which provides:

> "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

The submission of false information to the FEA is not only a crime in itself, but it often is also good circumstantial evidence that a substantive violation of FEA regulations was willful.

Frank Zarb has publicly stated on numerous occasions in recent weeks that it is the policy of the FEA in cases where there is significant evidence of a willful violation of FEA regulations, of the submission of false documents or of other criminal conduct, to refer such cases promptly to the Department of Justice ("DOJ"). Criminal cases should receive the highest priority and attention. This requirement is <u>mandatory</u> and must be followed uniformly in all regions.

The procedure by which this directive is to be carried out is as follows:

1. The point at which an investigator should remove himself from a case and a referral to DOJ made is dependent upon the quantity and substance of the evidence accumulated. Evidence that raises only a mere suspicion of a willful violation or other illegal act is not sufficient. There must be at least a "significant" amount of evidence pointing to a criminal violation, causing the investigator to focus on the probability that a criminal violation has occurred. It is not necessary that the investigator acquire a substantial quantity of conclusive evidence before considering to extricate himself. A reasonable determination must be made considering the facts and circumstances of each case, mitigating circumstances if any, and the nature of criminal violation involved.

2. Once an investigator or auditor has determined that he has significant evidence of criminal conduct, he should discontinue his investigation until he has received further instructions from legal counsel. This is because further investigation of a subject suspected of criminal conduct without providing the subject with certain procedural safeguards may irreparably prejudice any subsequent criminal prosecution. If possible, the investigator should disengage himself from the investigation without alerting the subject that the investigation is focusing on criminal conduct.

There are some circumstances, however, when it is neither possible nor advisable abruptly to terminate an investigation when it begins to focus on criminal conduct. For example, the subject of an investigation may, during the course of a routine interview, decide to confess that he willfully violated the regulations or falsified documents. In such circumstances the investigator should not terminate the interview and refuse to hear the confession. However, as soon as it becomes apparent that the subject is confessing to criminal conduct, the investigator <u>must</u> give him the following "Miranda" warning:

> "You are hereby advised that you have the right to remain silent, that anything you say can be used against you in a court of law, that you have the right to the presence of an attorney, and that if you cannot afford an attorney, one will be appointed for you prior to any questioning if you so desire."

After this warning has been given, the subject may knowingly and intelligently waive these rights. If he decides not to, the interview should terminate. If he agrees to waive his rights, the questioning can continue. However, since the burden of proving that the subject waived his Miranda rights will be on the Government in a subsequent criminal prosecution, the subject should be asked to sign a written waiver of such rights before he continues. 1/

3. The investigator or auditor who believes he has significant evidence of probable criminal conduct should take it to the Regional Counsel for consideration. The Regional Counsel should make an initial determination of whether or not the evidence of criminal conduct is so significant as to warrant the cessation of further investigation and referral to DOJ. Regional Counsel are encouraged to consult informally with the General Counsel's office in making that determination.

4. If the Regional Counsel concurs in the investigator's conclusion that significant evidence of criminal conduct exists, the Regional Counsel and the investigator shall prepare a referral memorandum containing at least the following minimum information:

(a) A brief description of the subject of the investigation;

(b) A full and complete statement of all relevant facts, which statement shall refer and be annotated to all relevant documentary evidence, which shall be attached in exhibit form to the memorandum;

(c) A statement of the laws and regulations believed to have been violated; and

(d) An assessment of whether or not there are also possible civil violations that need to be remedied (such as an order to cease certain unlawful activity or to refund an overcharge).

In the interests of brevity, the referral memoranda may incorporate by reference attached reports prepared by the investigator. The memorandum and/or the exhibits must, however, contain a thorough narrative statement of all relevant facts.

1/ The attached form is to be used to effect a waiver.

5. The referral memorandum with all relevant documentary evidence should be addressed to Douglas G. Robinson, Deputy General Counsel, Room 5120, New Post Office Building, 12th & Pennsylvania Avenues, N.W., Washington, D.C. 20461. The Office of General Counsel will then analyze the memorandum and evidence and, if appropriate, will forward the case to the appropriate section of DOJ. The Regional Administrator will be notified promptly of the referral. The Regional Office may also be contacted by the General Counsel's office for additional information prior to the referral.

6. After a referral is made, DOJ, if it agrees that a criminal prosecution is appropriate, will ordinarily refer the matter to the appropriate United States Attorney for the filing of an information or further investigation. Depending upon the complexity of the regulations involved, the national office of DOJ may assist the U.S. Attorney in the investigation and prosecution. The regional FEA office usually will be contacted directly by the U.S. Attorney to assist in any further investigation and the prosecution. Full cooperation should, of course, be provided.

The foregoing procedures are the only procedures for referring cases to DOJ. In no event should a regional office either formally or informally (even for the purpose of merely seeking advice) take a case to DOJ, including local U.S. Attorneys and the FBI, without going through the aforementioned procedures.

MIRANDA WARNING

You are hereby advised that you have the right to remain silent, that anything you say can be used against you in a court of law, that you have the right to the presence of an attorney, and that if you cannot afford an attorney, one will be appointed for you prior to any questioning if you so desire.

WAIVER OF MIRANDA RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coersion of any kind has been used against me.

(Signature)

Witness

Time

CORRESPONDENCE

United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
(PURSUANT TO SEC. 3, S. RES. 36, 93D CONGRESS)
WASHINGTON, D.C. 20510

April 23, 1975

Honorable Frank G. Zarb
Administrator
Federal Energy Administration
Washington, D.C. 20461

Dear Mr. Zarb:

In the course of the Subcommittee's continuing inquiry into the practices and procedures of the Federal Energy Administration, the Subcommittee staff has been looking into several aspects of the FEA's compliance and enforcement program. In this connection, and in order to provide information necessary for the forthcoming Subcommittee hearings, it would be most helpful if the FEA would furnish the information and materials listed in the enclosed schedule. I would appreciate it if this information would be supplied incrementally as it becomes available and completed by May 16, 1975.

The Subcommittee appreciates the continuing cooperation it has received from FEA personnel. If there are any questions, please have a member of your staff contact Mr. Kenneth Kaufman, Assistant Counsel, at 224-5617.

Sincerely,

Edward M. Kennedy
Chairman
Subcommittee on Administrative
Practice and Procedure

56-499 O - 75 - 7

FEA COMPLIANCE AND ENFORCEMENT

1. List for each FEA Region inquiries sent or referred to the National Office General Counsel for clarification and/or interpretation of FEA Regulations, guidelines and procedures in connection with the Refinery Audit and Review, Propane, Utility Suppliers, Crude Oil Producers, Wholesaler/Reseller and Retailer audit programs, and any other FEA Compliance and Enforcement programs, the dates on which those inquiries were received by the National Office General Counsel, and the status or disposition of each inquiry.

2. What are FEA's procedures and guidelines for initiation, preparation, issuance, negotiation and settlement of a Consent Agreement/Order, Notice of Probable Violation and Remedial Order for each of FEA's Compliance and Enforcement Programs--Refinery Audit and Review, Propane, Utility Suppliers, Crude Oil Producers, Wholesalers/Resellers and Retailers, and any other FEA Compliance and Enforcement programs?

A. Cite the authority for each procedure and guideline.
B. List the date that each procedure or guideline was adopted or implemented.
C. List each procedure and guideline that is in writing, and supply a copy of each written procedure and guideline.
D. Have any of these procedures or guidelines been revised since implementation or adoption? If so, outline the changes, give the dates of implementation and explain why the changes were necessary.
E. Have all FEA Regional Offices uniformly applied these procedures and guidelines? If not, outline Region-by-Region deviations from these procedures and guidelines and state whether the FEA National Office authorized these deviations.

3. What are FEA's procedures and guidelines for audits in in connection with the Refinery Audit and Review, Propane, Utility Suppliers, Crude Oil Producers, Wholesaler/Reseller and Retailer audit programs, and other FEA Compliance and Enforcement programs?

A. Cite the authority for each procedure and guideline.
B. List the date that each procedure or guideline was adopted or implemented.
C. List each procedure and guideline that is in writing and please supply a copy of each written procedure and guideline.
D. Have any of these procedures or guidelines been revised since implementation or adoption? If so, outline the changes, give the dates of implementation and explain why the changes were necessary.
E. Have all FEA Regioanl Offices uniformly applied these procedures and guidelines? If not, outline Region-by-Region deviations from these procedures and guidelines and state whether the FEA National Office authorized these deviations.

(Natural Gas Liquids)

4. List by each Region in connection with the Refinery Audit and Review, Propoan, Utility Suppliers, and Crude Oil Producers audit programs:

A. Each company chosen for audit and the number of auditors assigned to each company for each audit.
B. The date on which each audit was begun.
C. The status of each audit, including the percent of each audit completed.
D. Each audit, if any, which was terminated prior to completion, with an explanation for each termination.
E. Each audit in which no violation was discovered.
F. Each audit in which one or more violations were discovered, and for each such audit:

a) The type of violation(s) discovered.
b) Audit computation of the potential dollar amount of each violation.
c) The type of complaint drafted (Consent Agreement/Order, Notice of Probable Violation, and/or Remedial Order.
d) The date the complaint was drafted by the auditor(s).
e) The date or dates of each instance in which the complaint was submitted and resubmitted to Regioanl Office for review and concurrence and the status and disposition of each such complaint.

f) The date or dates of each instance in which the complaint was submitted and resubmitted to National Office for review and concurrence, and the status and disposition of each such complaint.
g) The date or dates of each instance in which the complaint was returned to the Area Office for revision and/or for additional audit work, and the status and disposition of each such complaint.
h) The date on which the complaint was issued to the company and the status or disposition thereof.
i) For each complaint settled, the date on which it was settled, and [illegible]
j) For each complaint settled, the dollar amount of refund, rollback, reduction in company "banked" costs, and/or other remedy.
k) For each instance in which a compromise on civil penalty was sought, state the reason, and give the potential dollar amount of the civil penalty.
l) For each instance in which a compromise on civil penalty was not sought, state the reason, and give the potential dollar amount of the civil penalty.
m) For each instance in which a compromise on civil penalty was reached, state the dollar amount collected and give the date of payment.
n) For each instance in which a civil enforcement action was taken or requested, give the date on which the complaint was referred to the Justice Department for prosecution, and the status or disposition of each case, including the dollar amount of civil penalty collected on each case resulting from civil enforcement action.
o) For each instance in which a criminal enforcement action was taken or requested, give the date on which the complaint was referred to the Justice Department for prosecution, and the status or disposition of each case, including the dollar amount of criminal penalty collected on each case resulting from criminal action.

4 when were these criteria and procedures adopted and implemented

4A. Who determines whether a violation of FEA Regulations was intentional or unintentional, what criteria and procedures are used in making that determination, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

5. Who determines whether to seek a Consent Agreement/Order, issue a Notice of Probable Violation or issue a Remedial Order, what criteria and procedures are used in making these determinations, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

6. Who determines the nature and amount of overcharges to be refunded for a violation of FEA Regulations, and the form such a refund should take (e.g., a direct refund, a price rollback, a reduction in company "banked" costs, or other), what criteria and procedures are used in making that determination, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

7. Who determines whether to seek a civil penalty or a criminal penalty for a violation of FEA Regulations, what criteria and procedures are used in making that determination, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting doucmentation.

8. Who determines whether to seek a compromise on civil penalty in the settlement of a violation of FEA Regulations, what criteria and procedures are used in making that determination, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

9. Who determines the dollar amount in a compromise on civil penalty, what criteria and procedures are used in making that determination, and are these criteria and procedures applied uniformly by all FEA Regioanl Offices? Please supply supporting documentation.

10. Who determines which companies are to be audited in each of FEA's Compliance and Enforcement programs, what criteria and procedures are used in making these determinations within each of the programs, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

11. What are FEA's procedures and guidelines for handling complaints from the public, and are these procedures and guidelines uniformly applied by all FEA Regional Offices?

A. Does FEA inform individuals of action taken and the results of their complaints?
B. Are these procedures and guidelines in writing? If so, please supply a copy.

12. What are FEA's National Office procedures and guidelines for communication between National Office personnel and Regional Office personnel on the direction and coordination of programs, dissemination and retrieval of program information, inquiries on programs, and program assignments in connection with each of FEA's Compliance and Enforcement programs? Please supply supporting documentation.

A. When were these procedures and guidelines implemented?
B. Have all FEA Regional Offices complied with these procedures and guidelines? If not, outline Region-by-Region deviations from these procedures and guidelines and explain why these deviations occurred.

13. What are each of the Regional Office's procedures and guidelines (either verbal or written) for communication between Regional Office personnel and National Office personnel on the direction and coordination of programs, dissemination and retrieval of program information, inquiries on programs, and program assignments in connection with each of FEA's Compliance and Enforcement programs? Please supply supporting documentation.

A. When were these procedures and guidelines implemented?

B. Do these procedures and guidelines adopted by each of the Regional Offices differ from those adopted or implemented by the National Office? If so, outline these differences on a Region-by-Region basis and explain why each of these differences exists.

14. Please provide figures for the number of personnel in the National Office and in each Regional Office assigned to each function or office for the following dates: July 1, 1974; September 30, 1974; December 31, 1974; March 31, 1975; June 30, 1975 (projected); and September 30, 1975 (projected).

15. Copies of the following documents are requested:

A. A memorandum prepared by Donald Clyman, manager of Program Development (in the National Office), entitled "Operating Procedures Between CARD and Regional Compliance Offices" dated November 5, 1974, and all attachments to the memorandum;

B. A description of the mission and function of the Compliance and Enforcement Office and each of its divisions, and revisions to these descriptions since June 1, 1974;

C. A copy of all "Narrative Reports" on compliance and enforcement (weekly and/or monthly) prepared by the Case Control and Analysis Division for the National Office.

D. A copy of the log or logs kept by the National Office on Consent Agreements/Orders, Notices of Probable Violations, and Remedial Orders in connection with FEA's compliance and enforcement programs.

16. State the precise functions, duties, responsibilities and authority of the National Office, the Regional Offices, and State Offices, respectively, in enforcing FEA's allocation and price regulations and in carrying out FEA's compliance and enforcement activities. Please supply supporting documentation.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

May 14, 1975

Honorable Edward M. Kennedy, Chairman
Subcommittee on Administrative
Practice and Procedure
Committee on Judiciary
United States Senate
Washington, D. C. 20510

Dear Senator Kennedy:

Enclosed are the specific materials requested by your staff. The specific issue treated in these papers has to do with the division of responsibilities and authorities among FEA's National Compliance Office, regional administrators, and regional compliance directors. While the enclosure is a complete set of the documents requested by your staff, the documents themselves do not convey adequately the total picture of the origin and resolution of this issue.

The need to define the responsibilities and authorities with more precision became apparent in late 1974 during the development of FEA's program for implementing a redirection of the compliance effort. This redirection was designed to accommodate to changed market conditions and to the congressional decision in December to extend the Emergency Petroleum Allocation Act beyond its scheduled termination date of February 28, 1975. Prior to the development of this plan, such issues had been handled on an ad hoc basis with effective arrangements worked out informally between the national and regional offices.

To establish the more formal delineations deemed appropriate for an extended program, the initial issue paper, dated January 28, was formulated by my compliance staff. This paper was then circulated to the interested offices in FEA, to include the Office of Intergovernmental, Regional and Special Programs (IRSP). The director of IRSP, in turn, circulated the paper to the regional administrators for their comments, which are included in the enclosure.

Honorable Edward M. Kennedy
May 14, 1975
Page 2

In response to the comments received, a second issue paper, dated February 7, was prepared and circulated in the same manner. In addition to the written comments, several of the regional administrators expressed to me during my visits and telephone conversations with them particular reservations about certain language referring to "operational control" from the National Office over investigations conducted by regional personnel. Accordingly, I directed that that language be amended to "close and continuous liaison" and "detailed technical guidance." This change was intended to make clear that operational responsibility rested with the regional administrator, while technical supervision would be provided by the National Office in complex cases to assure the uniform application of our regulations among all regions.

The revised issue paper was then submitted to Mr. Zarb for his decision. Because of the lack of agreement among the staff recommendations and in response to the positions taken by the regional administrators, Mr. Zarb elected not to use the issues process as a basis for resolving this matter. Rather, he directed that this issue be resolved in a meeting he had called with the regional administrators. At that meeting, he made it clear to the regional administrators that they reported to him, were his representatives in their regions, and were fully responsible for all regional programs. He also made it clear that, as his principal assistant for compliance and other regulatory matters, I spoke for him in my dealings with the regional administrators.

Subsequent to Mr. Zarb's comments, I spent approximately one hour with the regional administrators discussing the details of this approach, and we developed a thorough understanding of our respective roles in these matters.

It is clear that the division of responsibilities and authorities between the regional and national offices was subject to varying interpretations in the early days of the agency. It also became clear to me soon after I assumed this position in an acting capacity that we needed more effective vehicles for communicating between the national and regional offices. These mechanisms, to include my visits to regional offices, regional administrators' visits to National, frequent telephone conversations, and frequent exchanges of personal correspondence, have consistently improved.

Honorable Edward M. Kennedy
May 14, 1975
Page 3

To further clarify the matters involved with respect to all FEA programs, Mr. Zarb directed early in March the development of a comprehensive regional operations plan. Mr. John Askew, acting as a special assistant reporting directly to Mr. Zarb, visited each of the ten regions and reviewed their operations in detail. He and I had numerous conversations on his findings and on my perception of the relationship between the regions and the National Office. Out of those and similar efforts with the other assistant administrators and office directors, a draft regional operations plan was developed and circulated to the regional administrators for comment. These comments are now being received and, while they do not reflect unanimity, are constructive and helpful. A revision of the draft plan will be completed in the near future after consideration of these comments, and it is our objective to implement a formal regional operations plan by July 1, 1975.

Finally, I am pleased to learn that after our meeting with you on April 30, 1975, there appear to have been no further procedural problems associated with the visit of your staff to the FEA Regional Office in Dallas.

I hope this information has been helpful.

Sincerely,

Gorman Smith

Gorman C. Smith
Assistant Administrator
Regulatory Programs

Enclosure

United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
(PURSUANT TO SEC. 1, S. RES. M, 93D CONGRESS)
WASHINGTON, D.C. 20510

May 17, 1975

Mr. Elmer B. Staats
Comptroller General of
the United States
Washington, D.C. 20548

Dear Mr. Staats:

The Subcommittee on Administrative Practice and Procedure is conducting an inquiry into the compliance and enforcement processes of the Federal Energy Administration. I know that the General Accounting Office has been examining a number of FEA activities in this area, and has focused on many of the specific issues we will be reviewing during the course of our own inquiry. I am hopeful that we can coordinate our efforts with those of your staff, who have been extremely helpful and cooperative in the past, and that we can obtain the benefit of GAO's examiniation and analyses of matters of mutual interest.

In connection with our preparation for forthcoming hearings, it would be most helpful if the General Accounting Office could furnish the information requested in the enclosed schedule. If convenient for you, it also would be helpful if this information would be forwarded to the Subcommittee incrementally as it becomes available While many of these questions appear detailed and complex, I understand that GAO has been addressing many of the issues raised in them. Therefore, I am hopeful that your responses will not require substantial additional investigation.

Mr. Elmer B. Staats
May 17, 1975
Page 2

I want to thank you for your cooperation in assisting this Subcommittee and its staff. If any questions should arise, please have your staff contact Mr. Jim Michie at 224-5617.

Sincerely,

Edward M. Kennedy

Edward M. Kennedy
Chairman
Subcommittee on Administrative
Practice and Procedure

Enclosure

FEA COMPLIANCE AND ENFORCEMENT

1. Has FEA suffeciently strengthened its compliance and enforcement effort in order to adequately assure substantial compliance with FEA's pricing regulations? If not, please outline what GAO believes is needed in each of the C & E programs in order to effect substantial compliance with the regulations.

2. What is GAO's evaluation of FEA's Refinery Audit Review Program, Crude Oil Producer Audit Program, and Utilities Audit Program as each of these programs currently operates?

3. Please list the substantive issues relating to the adequacy of FEA regulations regarding C & E activities which remain unresolved, and the dates on which these issues were first raised within FEA. Please list the dollar amounts (or estimates) of potenital violations relating to each of these unresolved issues.

4. Please describe each of the organizational disputes within FEA that have hindered audit work on the Refinery Audit Review, Crude Oil Producer, and Utilities audit programs, and supply the dates (or approximate dates) on which these disputes arose and when they were resolved (if they were resolved).

5. Please list company-by-company those audits of refiner operations that were completed and those that were not completed under the RARP "audit cycle system". Please list for each refinery the percentage of completion of those audits not completed.

6. Please outline the problems experienced by FEA in its efforts to redeploy staff among regional offices and to recruit additional investigators and auditors technically qualified for the more complex Refinery Audit Review, Crude Oil Producer, and Utilities audit programs.

7. When and where will FEA obtain the additional investigators and auditors which FEA has said it will assign to the Utilities Audit Program?

8. Will current staffing levels authorized by FEA for refinery audit teams provide for adequate and effective audits? If not, please outline what levels GAO believes are needed.

9. What is GAO's estimate on how long it will take for each of the RARP teams in their respective companies to adequately perform audits on all 20 of the audit modules?

10. What is GAO's evaluation of the new module audit system for RARP?

11. Would it be good practice and procedure to set time deadlines for completion of each of the RARP audit modules?

12. Is FEA experiencing delays in processing enforcement actions? If so, please cite the reasons for these delays.

13. Please list company-by-company the dollar amounts (or estimates) of potential violations for each of the pending enforcement actions (NOPV's, Remedial Orders and Compliance Agreement/Consent Orders) in the Refinery Audit Review, Crude Oil Producer, and the Utilities audit programs, and please identify the issues involved and supply the date that each of these potential violations were identified.

14. What is the current estimate (GAO's & FEA's) on the overall dollar amount of potential violations in each of FEA's compliance and enforcement programs? If the estimates on any of these programs are not obtainable, please explain why.

15. What is GAO's evaluation of FEA's system of establishing priorities among its compliance and enforcement programs, and within each of its compliance and enforcement programs?

16. Please list the areas within FEA's overall compliance and enforcement effort, and the areas within each of FEA's compliance and enforcement programs, where policy, guidelines, procedures and/or criteria are unclear or non-existent, and outline how these inadequacies in policy, guidelines, procedures and/or criteria affect each of FEA's compliance and enforcement programs.

17. Please indicate the major problems in FEA's Propane and Wholesalers/Resellers and Retailers audit programs.

18. Please indicate the major problems in the development, implementation and enforcement of FEA's transfer pricing regulations, and in FEA's regulation of the price charged for natural gas liquids produced by natural gas plants, such as propane, butane, and natural gasoline.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

[illegible]

Honorable Edward M. Kennedy
Chairman
Subcommittee on Administrative
Practice and Procedure
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in reply to your letter of April 23, 1975, to Mr. Zarb requesting the submission of detailed and specific information regarding the Federal Energy Administration's (FEA) Compliance Program. I apologize for the delay in providing this answer and assure you that we will make every effort to be more timely in our future responses.

You will recall that I transmitted a series of documents to you on May 14 which related to clarification of the roles of the Regional and National Compliance Offices.

In addition, on May 16, I related to Mr. Kaufman that the volume and detail of material requested on FEA's compliance activities was quite extensive and that it was doubtful whether we could meet the deadline set forth in your letter of April 23. Our ability to provide a complete response to the subcommittee's request has been further complicated because much of the information has to be obtained from FEA field offices located throughout the Nation.

Nevertheless, our National Compliance Office has made available to Mr. Michie voluminous material which answers most of the questions contained in your letter under 2C, 3C, 12, 14, 15A, 15B, 15C, and 15D. (See attached list dated May 27, 1975).

- 2 -

Enclosed herewith is additional information which responds to most of questions 2A, 2B, 2D, 3A, 3B, 3D, 4A, 5, 6, 7, 8, 9, 10, 11, and 16.

Additional data responding to these and other questions is now being received from our various field Compliance Offices. We will forward this extensive field material in incremental fashion as it is received beginning Monday, June 2, 1975.

I regret the delay which has occurred and accept full responsibility for it. Please be assured that it is not occasioned by indifference to the subcommittee's desires, but rather by the magnitude of the workload imposed on the staff by attempting to simultaneously respond to eight Congressional Committee inquiries regarding varying aspects of FEA's Compliance Program.

Sincerely,

Gorman Smith

Gorman C. Smith
Assistant Administrator
Regulatory Programs

Enclosures (2)

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

May 30, 1975

MEMORANDUM TO DEL FOWLER

FROM: GORMAN SMITH

It is reported to me that certain persons in your region may not be complying fully with the terms of the agreement worked out between Senator Kennedy and Mr. Zarb as set out in my May 2, 1975, memorandum.

Specifically, certain employees or former employees of Region VI believe that repeated questioning about the number of times and most recent date of interviews with the Subcommittee staff is improper.

Would you please call to the attention of your supervisors and inform all of your employees of the provision of Item No. 6 in Senator Kennedy's letter to Mr. Zarb of May 1, 1975, and take such other action as may be required to assure that all FEA supervisory personnel abide by the provisions set out in Senator Kennedy's letter of May 1 and my memorandum of May 2, 1975.

bcc: Tom Susman

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

JUN 2 1975

Honorable Edward M. Kennedy
Chairman,
Subcommittee on Administrative
Practice and Procedure
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is a further response to your letter of April 23, 1975 in which you requested certain information about the compliance and enforcement program of the Federal Energy Administration. As noted in my letter to you dated May 29, I had previously transmitted to Mr. Michie, on May 27, material which answered questions 2C, 3C, 12, 14, 15A, 15B, 15C and 15D. The May 29 letter furnished additional information in response to questions 2A, 2B, 2D, 3A, 3B, 3D, 4A, 5, 6, 7, 8, 9, 10, 11 and 16.

The purpose of this letter is to respond to the remaining questions and, in certain instances, amend answers furnished in my letter of May 29 to include information subsequently received from FEA's Regional Offices. These amendments occur in the answers to questions 2, 3, 5, 8 and 9.

Your attention is invited to the fact that some materials contain information related to audit and investigation techniques and ongoing investigations, disclosure of which could seriously hamper compliance and enforcement efforts and jeopardize cases in progress. We therefore respectfully request that such information be treated as confidential and used only by members of the Subcommittee and staff as necessary for their deliberations. The pages which contain information which should not be disclosed outside the Subcommittee are clearly marked with the words "Limited Official Use."

As stated in my letter of May 29, the delay in responding to your original letter has been occasioned in part by the enormity of the effort to collect the supporting information from the Regional Offices. Much of this information has not been previously reported

in the form requested. While working to assemble the information to respond to your request, my staff has also been required to undertake similar efforts on behalf of other committees of the Congress.

Beyond collecting the information and answering your questions, members of my staff have had numerous discussions with members of your subcommittee staff to answer their questions and provide additional information requested. In addition, the subcommittee staff has been afforded full access to the files of both our National and Regional Offices.

I hope that our delay in answering your inquiry has not unduly hampered your subcommittee's study of FEA's compliance and enforcement program. Should you need additional information, we will be happy to provide it.

Sincerely,

Gorman Smith

Gorman C. Smith
Assistant Administrator
Regulatory Programs

Enclosures

United States Senate

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON
ADMINISTRATIVE PRACTICE AND PROCEDURE
(PURSUANT TO SEC. 3, S. RES. 56, 93D CONGRESS)
WASHINGTON, D.C. 20510

June 3, 1975

Honorable Frank G. Zarb
Administrator
Federal Energy Administration
Washington, D.C. 20461

Dear Mr. Zarb:

I am writing to invite you to testify at the hearing of the Subcommittee on Administrative Practice and Procedure on June 20, concerning FEA's compliance and enforcement activities.

We will also obtain testimony from several FEA officials and employees at the national and regional levels. I have asked the Subcommittee staff to provide your staff with a full briefing in advance of the hearing as to the witnesses who will be called and the subjects to be discussed.

In this connection, you will recall that at our meeting on April 30 we discussed procedures for contacts between Subcommittee staff and employees in FEA Region VI. These procedures were spelled out in my letter to you the following day.

It has come to my attention that since the Subcommittee staff completed its visit to Region VI, a number of regional employees have been questioned by regional officials as to whether the Subcommittee staff had subsequently been in contact with them, what the content of any such contacts or discussions was, and whether the employees had been asked to testify at our hearings. While FEA officials should have every reasonable opportunity to stay informed of our inquiry, I feel that such specific questioning of Region VI employees was contrary to our understanding, and Subcommittee counsel expressed this concern to your staff last week. More importantly, it now appears that the questioning has in fact had an inhibiting effect on the willingness of some regional employees to communicate openly with the Subcommittee or to testify at a Subcommittee hearing.

Honorable Frank G. Zarb
June 3, 1975
Page 2

I know that there are occasional breakdowns of communication in an agency as large as FEA, but you can understand my interest in our most effectively obtaining information for our inquiry while ensuring full protection against sanction or retaliation for all FEA employees who communicate with the Subcommittee or participate in the hearing.

In light of this potential problem, it would be useful if I could obtain your personal reassurance that all FEA employees who wish to testify before the Subcommittee will be encouraged to do so by FEA and that no disciplinary or other adverse action or sanctions of any kind will be taken against any FEA employee for testifying or for communicating with or supplying information to the Subcommittee.

I will look forward to hearing from you and am glad we will have the benefit of your testimony on the 20th.

Sincerely,

Edward M. Kennedy
Chairman
Subcommittee on Administrative
Practice and Procedure

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

JUN 10 1975

OFFICE OF THE ADMINISTRATOR

MEMORANDUM TO: All FEA Employees

FROM: Frank G. Zarb
Administrator

SUBJECT: Cooperation with Congressional Inquiries

As many of you know, the FEA and virtually all of its programs are the subject of intense review by several different committees and subcommittees of Congress and by Congress' auditing arm, the General Accounting Office. Many of you have perhaps already been called to testify before Congressional committees, have been contacted by committee or GAO investigators, or have helped prepare responses to Congressional inquiries.

The purpose of this memorandum is to advise you that it is the policy of this agency to cooperate as fully as practicable with any responsible Congressional inquiry or investigation. That means, among other things, that you are free to talk to any Congressional investigator about your job or about the FEA, and you have my assurance that the FEA will not in any way penalize you because you have done so, with or without your supervisor's permission.

There are, however, some common-sense ground rules you should follow in talking with Congressional investigators. First, you should make certain that he or she is in fact working for a Congressional committee or the GAO.

Second, to the extent possible the information you provide should be based on personal knowledge, not speculation. If you are expressing an opinion, make sure the investigator knows it is an opinion rather than fact.

Third, do not give any investigator copies of documents except in accordance with instructions from your supervisor,

and only with his or her knowledge and approval. Ordinarily, the FEA will give Congressional committees and the GAO copies of documents from our files, provided that we first receive a request in writing and arrangements can be worked out to insure proper handling of confidential information. If you receive a request for any document, communicate that request to your supervisor, who will advise you as to how to proceed.

Finally, if you are asked to testify before a Congressional committee, you are completely free to accept the invitation. You should report such an invitation and your expected area of testimony, if you know, to your supervisor, who in turn is to report it to the appropriate Congressional liaison person in Washington. If you would prefer not to testify or if you want guidance or advice on your testimony, you should contact your supervisor or a member of FEA's legal staff.

In most instances, Congressional investigators and GAO employees have good working relations with FEA and have conducted their investigations in a responsible fashion. However, in some isolated instances tactics have been used that amount to improper harrassment of FEA employees. Therefore, while you are hereby directed to be as cooperative as practicable with Congressional investigations, there is a limit to how far you are required to go. For example, since it is the policy of FEA that you may meet privately with Congressional investigators in your office or elsewhere during working hours, it is not necessary that you comply with requests to meet with them after business hours or at locations that are inconvenient to you, unless, of course, you want to. Moreover, you are not required to spend so much time with investigators that your ability to do your other assigned work is jeopardized. If you feel that a Congressional investigator is unduly imposing on your time or is otherwise harrassing you, please advise your supervisor, who is directed to relate that information to the appropriate Congressional liaison official in Washington.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

Honorable Edward M. Kennedy
Chairman
Subcommittee on Administrative
Practice and Procedure
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

On June 2, 1975 I submitted to you a comprehensive report in response to your letter of April 23, 1975. Question number four in this report included considerable information on the status of numerous cases that are either in process or have been completed by the regional offices. You will note that in our answer to Question four we stated that in some instances information was missing and that there were a few inconsistencies.

In order to be more responsive to your request, we have reviewed the data included in Question four and have made several corrections which we feel would benefit the Subcommittee's efforts. Enclosed is a complete set of tables for Question four with our corrections. We are also submitting an additional enclosure that will further clarify some of the terms used and that will describe the method of presentation of the information received from the regions.

As with the prior submissions, we respectfully invite your attention to the confidentiality of information relating to cases in process which is contained in this material and marked "Limited Official Use."

I trust that members of your Subcommittee have been provided all of the information they have requested from the Compliance staff and as I stated before will be happy to provide any additional information you may request.

Sincerely,

Gorman C. Smith
Assistant Administrator
Regulatory Programs

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D C 20461

June 19, 1975

OFFICE OF THE ADMINISTRATOR

Honorable Edward M. Kennedy
U. S. Senate
Washington, D. C. 20510

Dear Senator Kennedy:

I appreciated very much the opportunity to appear today before the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee. The courteous reception and the incisive questions of the Subcommittee members were very much appreciated.

As I noted in my testimony and during the question-and-answer period, FEA's compliance program has experienced some delays and problems, partly due to the initial temporary life-span of the regulations, partly due to the administrative complexities inherent in establishing any program of the magnitude necessary to oversee petroleum regulations and enforce their provisions, and partly due to legal and other factors beyond our control.

Improvements in the compliance program have been made, are being made, and will continue to be made wherever changes in procedure or practice can help us to accomplish the stated objectives of the Emergency Petroleum Allocation Act more efficiently and equitably.

In spite of the fact that there have been shortcomings in the program, I feel that the track record of the past six months shows significant progress both in developing a better set of rules of compliance and in being more effective in enforcing those rules.

I am attaching for the Subcommittee's record a summary of compliance actions over the past six months which indicates some of the major steps taken by FEA to assure compliance with regulations. I hope that the summary will assist the members of the Subcommittee in assessing the results of FEA's compliance program to date. I also hope that it will demonstrate my personal commitment, and FEA's commitment as an agency, to vigorous and fair enforcement of Federal regulations.

Sincerely,

Frank G. Zarb
Administrator

Attachment

June 19, 1975

SOME

COMPLIANCE ACTIONS IN THE LAST SIX MONTHS

December

- Announced at first staff meeting my commitment to a vigorous compliance program.
- Set up briefing on the status of compliance program.
- Learned of plans to reduce staffing for compliance; directed immediate floor on compliance staffing levels.
- Directed evaluation of adequacy of staffing levels.
- Directed preparation of Compliance Action Plan for timely completion of redeployment among program areas.

January

- Approved Compliance Action Plan.
- Secured from Civil Service Commission ruling on reemployment rights (required to implement Compliance Action Plan).
- Issued instructions to regions on personnel procedures to effect redeployment.
- Advertised vacancies in gaining regions.
- Forwarded to White House nomination for Assistant Administrator in charge of compliance and other regulatory activities.
- Directed preparation of overall compliance strategy.
- Directed preparation of issue paper on national versus regional responsibilities and authorities for compliance.
- Approved 20 percent increase in size of regional general counsel staff to support compliance.
- Met with Regional Administrators to urge more vigorous compliance activity.
- Initiated utilities supplier project.
- Initiated audits of crude independent producers.
- Conducted training in producer audits at conference in Kansas City.

- Conducted briefing on propane investigations for directors of Compliance and Enforcement in Houston.
- Issued utilities investigation program guidelines.
- Drafted instruction for transfer pricing report.

February

- Developed training course for utilitites investigation.
- Completed and distributed new auditor/investigator handbooks.
- Conducted auditor/investigator intensive training course in Dallas.
- Issued instructions on how to apply equal application rule to refiners.
- Directed regions that C&E positions would not be diverted to other FEA programs.
- Revised refinery audit approach to incorporate discrete modules as opposed to a single comprehensive audit.
- Organized task forces to conduct comprehensive review of allocation and pricing regulations to identify changes in case of future shortages.
- Hired special assistant to concentrate on survey of regional operations.
- Began review of basic refiners' reporting forms.

March

- Issued instructions to improve FEA and Customs cooperation on investigation.
- Issued supplement to utilities investigation guide.
- Issued refinery audit modules.
- Issued instructions on utilities reporting requirements.
- Began audit of jet fuel sales to Department of Defense.
- Conducted basic refiner audit course in Atlanta.

- Conducted basic auditor/investigator courses at Dallas and Kansas City.
- Began development of entitlements training course.
- Initiated study of compliance implications of gasoline rationing.
- Formed separate Office of Compliance in the General Counsel.
- Directed development of comprehensive Regional Operation Plan and Headquarters Operation Plan to serve as basic management structure for all FEA programs.
- Met with Regional Administrators; issued instructions on relationships between Regional Administrators and Assistant Administrator for Regulatory Programs.

<u>April</u>

- Implemented pilot program of systematic sample selection for compliance targeting in wholesale/retail sectors in Region II.
- Initiated revision of basic compliance reporting forms.
- Expanded staff in utilities investigation.
- Issued instructions on use of notices of probable violations.
- Conducted basic refiner audit course in Dallas.
- Began development of advanced RARP seminars and NGL training course in anticipation of NGL enforcement effort.
- Senate confirmed Deputy Administrator and Assistant Administrator in charge of compliance and other regulatory programs.
- Issued guidelines on application of class of purchaser ruling.

May

- Directed a significant expansion of utilities investigation.
- Drafted and circulated for comment Regional Operation Plan.
- Conducted first of a series of on-site review of regional compliance programs with national office team.
- Distributed revised chapters of compliance manual for review and comment.
- Conducted three-day meeting with regional compliance directors in Atlanta.
- Issued six revised and expanded refinery audit modules.
- Conducted basic refiner audit course in Dallas.
- Submitted nominations to White House for Deputy Administrator and Assistant Administrator for Management and Administration.
- Directed hiring of 50 additional compliance personnel by July 1.
- Issued proposed rulemaking to provide for consent orders and procedural regulations.
- Received initial data for implementation of transfer pricing ruling.
- Issued guidelines on collateral investigations for utilities project.
- Requested explanation for staffing shortages in regional compliance programs.
- Sent team from Management and Administration to Dallas to resolve budgetary problems.
- Requested GAO review and evaluation of utilities investigation.
- Requested regional administrators' comments on regional organization of operations and compliance.

JUNE

- Sent team from Management and Administration to San Francisco to resolve staffing and budgetary problems.
- Completed draft of Headquarters Operation Plan.
- Executed specific delegations of authority to regional administrators.
- Directed preparation of comprehensive analysis of compliance manpower requirements, priorities, and staffing recommendations.
- Prepared interim report to OMB for additional staffing of 470 positions for compliance program.
- Directed preparation of contingency plan for enforcement at retail level.
- Received recommendations for reorganization and expansion of national compliance office.
- Received amendment to continuing resolution to support increased compliance effort pending FY 76 appropriations.

January through June

- Issued 29 rulemakings, 21 interpretations, and 6 rulings on FEA regulations.
- Issued 49 separate items of guidance from national office to field staff on compliance programs.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

July 7, 1975

Honorable Edward M. Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

Thank you for your letter of June 26, 1975. I appreciate very much your thoughtfulness in sending it.

Please be assured that I share your view on the importance of our compliance program. While the process of responding to your questions and preparing for the hearings was not any fun, it was a very useful undertaking. We now know more than we did about what needs to be done and have an increased sense of urgency in getting on with a major improvement of our program.

The first tangible results of our staffing initiatives described at your hearings are already evident. Today the first increment of new auditors for our field staff will come onto FEA's rolls. They will be followed in the next few weeks by a substantial augmentation that will increase our capabilities. We have also continued action on a number of initiatives to improve our efficiency.

I look forward to continuing to work with your highly competent staff as we press on with our improvement program. I think your staff deserves a "well done" for the unusually thorough manner in which they conducted their investigation and for their focus on real issues as opposed to "witch hunts." They earned the respect and high regard of me and my staff in the course of their work.

Thank you again for your interest in our program.

Sincerely,

Gorman Smith

Gorman C. Smith
Assistant Administrator
Regulatory Programs

F.E.A. STATISTICS ON COMPLIANCE AND ENFORCEMENT

Compiled from data supplied June 2, 1975, by the Federal Energy Administration to the Subcommittee on Administrative Practice and Procedure.

Violations	UTILITIES U.S. Total	UTILITIES Region VI	PRODUCERS U.S. Total	PRODUCERS Region VI	REFINERS U.S. Total	REFINERS Region VI
Resolved & Unresolved	47	6	65	14	215	70
Number Resolved	17	4	22	1	75	16
Dollar Amount	$4,690,927	$573,681	$959,045	$12,610	$267,145,156	$61,503,457
Number of Penalties	6	3	12	0	0	0
Dollar Amount	$55,500	$20,500	$55,008	0	0	0
Number Unresolved	30	2	43	13	140	54
Dollar Amount	$46,602,952	$1,172 785	$8,121,077	$1,639,892	$459,571,959	$89,135,641
Unresolved since '74	1	0	24	7	43	15
Dollar Amount	$65,969	0	$5,814,697	$605,773	$203,240,551	$52,528,927
Unresolved since Jan '75	2	0	3	3	44	19
Dollar Amount	$237,500	0	$775,050	$775,050	$63,798,396	$31,592,136
Number unresolved with dollar amount undetermined	3	0	9	0	60	33

56-499 O - 75 - 9

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

FEB 10 1975

Mr. Robert W. Mitchell
Regional Administrator
Federal Energy Administration
150 Causeway Street
Boston, Massachusetts 02114

Dear Bob:

For some time -- ever since late spring 1974 -- the Federal Energy Administration has been schizophrenic about its regulatory programs. The Administration's policy has been that we would deregulate the petroleum industry as soon as Congress would let us. Budget and staffing decisions for regulatory programs have been made with that policy in mind. Being a firm believer in the virtues of a market system -- even one as far from the perfectly competitive model as our own -- I personally believe it to be a good policy and a worthwhile objective.

On a separate track, we have -- for reasons that seemed, and probably were, valid at the time -- failed to translate that policy into action. The timetable for deregulation envisaged starting to deregulate certain products in December and being well on the way out of the business by late spring of 1975. The budget submission for this office included in the President's FY 1976 budget was, by direction, premised on such a timetable, as were the staffing levels incorporated in the famous October 16, 1974, memorandum.

In fact, we have added to our regulatory programs [211.12(h), 211.67, NGL pricing, etc.]. Moreover, we have made a series of changes trying to accommodate a set of allocation regulations designed for a shortage to operate in a period of adequate supplies of everything except propane.

Continuation of these two trends has already caused one effect -- a series of regulations suited well to neither shortage nor surplus conditions -- and threatened within 60 to 90 days to cause a second -- inability to comply with the provisions of our existing regulations. To forestall the second condition, Mr. Zarb has directed that we will not reduce our regulatory program staff below that required (1) to operate our existing programs; and (2) to provide a cadre for the rapid implementation of an allocation system in a short-supply situation if required. You will be receiving soon, if you have not already, specific guidance from Len Pouliot on what this means. In English, it means that for the present we are freezing staffing levels associated with regulatory programs at the December 31 levels set out in the October 16 memorandum, except for General Counsel, which gets some increases to support the compliance and enforcement effort.

To be prepared to remedy the first condition on a timely basis, I have organized here a task force representing all the AA's and separate offices. The task force will review the existing regulatory program and recommend adjustments required to get the best allocation program we know how to devise. A copy of the memo establishing that task force is enclosed.

Since you are the repositories of much of the experience with the existing program and the one we ran last winter, your input to this task force is urgently required. Please submit by February 21 your list of suggested changes to the allocation program we now have and your reasoning to support those suggested changes. This list should focus on the major elements of the program and not on such things as, "an allocation should be changed from A to B," and other nitpicks. Also, your comments should not be directed toward tinkering with the existing program to make it fit the existing supply situation. What we are interested in is designing a program that will best execute the mandates of the Emergency Petroleum Allocation Act in a short-supply situation.

Please do not attach some deep and hidden meaning to this effort; there isn't any. There is no secret fallback position, imminent policy change, or any other such intriguing motivation behind this effort. Rather, this is an attempt to discharge our responsibility as FEA employees to have the best program we know how to design in the event that, for whatever reason, we are required again to allocate petroleum products that are in short supply. It is simply irresponsible for us not to use the current slack period to review our successes and mistakes to learn how to

do the job better next time around if, God and Allah forbid, there is a next time. If someone on your staff is bent on "leaking" the fact of this effort, which is no secret, please be sure he leaks this paragraph along with it.

Thanks for your help. We will continue to seek your views as this effort develops.

Sincerely,

Gorman C. Smith
Acting Assistant Administrator
Operations, Regulations and Compliance

Enclosure

Cop for each AA, Dir at next staff mtg, Nlo

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

March 4, 1975

MEMORANDUM FOR JOHN HILL

FROM: Gorman Smith

SUBJECT: Regulatory Program Issues

1. What is our job?

   a. Operate (apply current regulations to facts) existing allocation, price control, and oil import fee programs.

   b. Measure extent of compliance with price and allocation regulations; take appropriate corrective action when violations are identified.

   c. Formulate proposed changes to existing regulations to assure attainment of FEA objectives.

   d. Conduct detailed planning for coping with contingencies involving major supply interruptions.

   e. Participate in formulation of FEA policy, particularly policies likely to have regulatory implications.

2. How well are we doing it?

   a. <u>Operations</u>: Well enough for now, but we are ill prepared for a severe shortage, principally because we lack the data systems we need to operate effectively in a real shortage. We are unable to know or to demonstrate whether we are making fuels in short supply available "equitably," meaning in accord with our own regulatory guidelines.

      <u>Solution</u>: Better definition of our data needs; then better support from Office of Data Services. Project to define data needs now underway.

b. Compliance/Enforcement: Not well enough, even for now. A major redirection of effort away from retail toward producers, wholesalers, and refiners is underway but going slowly. Development of standard procedures and instructions is underway, but late. Corrective action is being taken but is going slowly; Regional Administrators do not fully support in all cases.

Solution: Keep pushing to get new people, procedures in place.

c. Regulatory Development: Weakest area because of too few people of wrong types assigned; the capable ones there given too little guidance and support. Corrective staffing is in process but excruciatingly slow. Current staff has improved considerably. Major deficiency: FEA's regulatory process is informal, ill-defined, and in fact controlled by OGC priorities. What they want gets out, and vice versa. Coordination has improved but still leaves much to be desired.

Solution: You decide on priorities for regulation work, assure that GC clears with us; the vice versa is automatic since GC signs off on everything to the Federal Register. Perhaps you should sign off on Federal Register material?

d. Contingency Planning: Done reasonably well, given small staff. No major problems at this stage.

e. Policy Formulation: Virtually none. I have been so busy in the other areas that I haven't even bothered to start on this one yet; I considered it lowest priority.

3. Major impediments to progress.

a. Staffing: It takes 90-120 days to hire someone. The uncertain future of regulatory programs makes it hard to attract top-flight people. I have adequate spaces (325) but not right number of the right kind of faces. FEA personnel process is incredibly slow and difficult.

b. Relationship to RA's: They don't know whom they work for. They (and he) say Zarb, but practically that doesn't work. Geimer says Geimer, but that doesn't work either because he has no program responsibility. They know they had better listen

to me but don't know how much and aren't going to cross anyone else here to keep me happy. I do not fault them; nobody here has ever clarified the world to them.

Solution: Inform RA's they report to you, and that I speak for you with respect to operation of regulatory programs. Any directive/decision from me is always appealable to you but, pending appeal, is to be executed as if it came from you. That preserves their legitimate concern about having access to the top and makes it clear where they get their day-to-day marching orders as far as regulatory programs are concerned.

c. Relationship to General Counsel: Discussed above. Much better than in past, but GC's physical "lock" on regulations means he controls pace, regardless of views of others (especially me). My only recourse now is to go along or whine to Frank if I can't wheedle my way with GC. No self-respecting GC will ever confine himself to "legality," nor should he, probably. I'm glad to work with and occasionally fight the GC on what regulatory policy should be, but now it's not an even fight.

d. Lack of Adequate Data Support: No problem now because our allocation programs really aren't doing anything; but this is the biggest single exposure we have in the office in case of a future shortage. Responsibility for current condition is shared between ORC and Data Services. "Deregulation" has been the watchword, so why bother getting ready to regulate as well as possible? I am now defining our explicit data needs for each program. These will be presented to Data Services as requirements. As a minimum, we must know what we need in the event of a future shortage, even if we decide not to actually install it now.

e. Uncertainty as to Program Future: This is inherent in the nature of our programs but very unsettling to many staff members. I have discussed with staff; said I recognize but that nobody can change, and suggested that anyone for whom security and stability are of prime importance would probably be a lot happier somewhere else.

3/13/75

TO: Fred Stuckwisch

VIA: Gene Guziewicz

FROM: Charles Merrill

SUBJECT: Problem areas, Region VI

1. High priority should be given to resolving the four (4) following listed major problem areas currently being experienced with Region VI:

(1) Lack of timely action by Regional Counsel in issu ing an NOPV once an issue has been identified and/or a draft NOPV has been provided to Region VI by the Area Manager/Team Leader. Examples are as follows:

COMPANY	ISSUE & ESTIMATED DATE IDENTIFIED*	DRAFT NOPV BY AREA OFFICE	DATE NOPV PROCESSED BY REGION VI
	Discontinuance of Discounts Aug. 1973	12/11/74	No action to date
	Class of Purchaser Aug. 1974	9/25/74	" " " "
	Guest Credit Cards June 1974	11/26/74 & 12/11/74	" " " "
	Retail Service Station Leases Late 1973	1/27/75	" " " "
	Over Recovery	12/20/74	" " " "

* Where Available

Unreasonable delay is also occuring between date of actual issuance of NOPV and date of issuance of Remedial order. For example, The Co. NOPV of 9/17/74 re : no lead gasoline is still awaiting issuance of the Remedial order.

(2) The quality of the NOPV's and RO's, and supporting documentation is generally so poor that additional delays are being encountered at the Card National Office and General Counsel in processing NOPV's for approval and issuance. Recent examples are Card Case No.

Card Case #

and Card Case No.

This additional delay further compounds the basic problem cited in paragraph (1) above.

(3) Lack of timely response to requests for information. A recent example is the Card requests of 12/26/74, on use of Propane & Butane as refinery fuel. Co. filed initial response on 1/14/75- Additional schedule was completed by RARP Audit Team 2-3-75 Transmittal Memo prepared by RARP Auditor 2/21/75 through Area Manager & Reg. Adm. - Transmittal by RA dtd 3/4/75-Recv'd here 3/12/75.

(4) The Region VI constraints placed on communication between RARP field and National Office personnel further exacerbates the conditions noted in paragraphs (1) through (3) above and create additional roadblocks to timely and effective accomplishment of the RARP objectives. These conditions have inevitably contributed to generally poor morale in Region VI. An example is cited in the attached 3rd cycle trip report covering

2. Timely resolution of the operational problems being encountered in Region VI is particularly urgent in view of the major portion of the total RARP program managed and/or controlled by Region VI.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : FEA Dallas Staff

DATE: March 25, 1975

FROM : D. M. Fowler
Regional Administrator

SUBJECT: Tentative Itinerary, Visit of Administrator Zarb to Dallas Regional Office, Wednesday, 2 April 1975.

10:50	Arrive DFW; met by Fowler and Campbell
11:30	Arrive at SMU sponsored meeting, Fairmont Hotel
11:45	Lunch and Address
2:00	Press Conference
2:45	Travel to Region VI FEA Office
3:00	Briefing by Fowler in Administrator's Office
3:15	Compliance Activities by Gifford in his office Introduce - Curnutt and Garcia
3:30	Area Manager Activities, White in Gifford's Office
3:40	Operations - Allocation, Alexander in his office Introduce - Barrie
3:45	Operations - Resource Development, Alexander in his office Introduce - Reserve Team Members Discuss - Reserve Study
3:55	Operations - National Storage, Alexander in his office Introduce - Staff involved
4:00	Conservation, Rivera in training facility Poster exhibition Introduce - Deaton and Harper
4:10	Management, Carlson in his office Introduce - McDowell and DeMoss
4:15	Congressional/Intergovernmental, Nikolis in Administrator's Office

Page - 2
FEA Dallas Staff

4:20 Legal, Elmer in Administrator's Office

4:30 Depart for DFW Airport, Fowler and Campbell

5:30 Depart DFW for San Diego

Please provide me by Thursday morning penciled outline of points to be covered in meeting with Zarb. All comments should be informational, educational, and positive. No complaints about anything or anyone, please.

APR 2 3 1975

Gorman C. Smith, Assistant Administrator, Regulatory Programs

FY 75 Financial Resources Available to Regional Offices

Prudent

A recent communication from D. M. Fowler, Administrator, Region VI, has disclosed a problem which I believe warrants your immediate attention. The problem concerns the area of National FEA financial management in allotting this Agency's resources. My concern rests with the impact this problem has on the effective execution of all regulatory programs under my direction. Last week, I solicited from all regions an evaluation of the fourth quarter allotments recently generated. Enclosed is a display by region of the impact of their current budgets on the program areas of my concern; namely, allocation and compliance operations. To put the enclosed submissions into perspective, I will briefly describe the background.

Normally, responsibility for budget execution is delegated by an Agency Head to the principal office heads, or it is retained by the agency's budget and accounting staff. FEA has attempted to play a combination of both with poor results. Initially, first quarter allotments were made to the Assistant Administrators and Directors which neither indicated that a full year extension could be assumed or whether it could not. In terms of being able to plan for future operations, this uncertainty seriously hampered operational managers in planning their fiscal year activities. However, as these first allotments seemed adequate, few complaints were aired.

Second quarter allotments were not received until late December when full year allotments, by the remaining quarters, were distributed with the provision that over-expenditures would not be permitted. For this Office and many other recipients, the amounts distributed resulted in deficits as of the date of the allotment, and in the unavoidable prospect of even larger deficits in the future if essential program activities continued. My experience in attempting to resolve this and subsequent inadequate allotments appears to be representative throughout the Agency, certainly throughout the Regions. After various meetings and exchanges of memoranda trying to obtain a realistic allotment, I began to wonder whether the Financial Management Office was trying to scare people into conserving

money by issuing unrealistically small allotments. It concerns me, however, that some of the Regions may not have been "let in" on the realities, and are responding with severe measures that will result in seriously curtailing the effectiveness of agency programs.

As a result, I am requesting that serious attention be given to the state of the Agency's financial situation for the remainder of this fiscal year. If indeed, the availability of resources is restricted, an assessment of priorities should be made and the remaining funds be allotted accordingly. I feel that the postponement of hiring actions, reductions in current strengths, and severe travel restrictions will have a dangerous impact on the Region's ability to carry out compliance and operations functions. As significant backlogs already exist in some Regions, such actions could have long range detrimental effects. I especially question the wisdom of generating substantial "set asides" for contingency programs not yet authorized by the Congress at the expense of inadequate support of our existing compliance responsibilities.

If resources are limited, and it is too late to seek Congressional relief, I request the opportunity to detail the effects of such actions, so that consideration might be given to the redirection of resources from other program areas. None of the operations for which I am responsible can endure the "administrative strategies" which have been allowed to perpetuate. I will be glad to discuss this further with you at your earliest convenience.

Enclosure:

cc: W. Geimer
J. Blackwell

IMPACT OF FOURTH QUARTER ALLOTMENTS

ON

REGIONAL OPERATIONS

REGION	IMPACT CRITERIA	IMPACT STATEMENT(S)
I. (BOSTON)	REDUCTION OF COMPLIANCE MANPOWER STRENGTH AS A RESULT OF NEW CEILINGS SET BY THE ADMINISTRATOR, REFLECTED IN FOURTH QUARTER ALLOTMENT.	SEVENTY (70) COMPLAINTS OVER AND ABOVE THOSE ASSIGNED CANNOT BE ASSIGNED DUE TO INADEQUATE MANPOWER. ONE HUNDRED (100) OPEN CASES PREVIOUSLY ASSIGNED TO LOST EMPLOYEES HAVE NOT BEEN REASSIGNED. CURTAILMENT OF 20 - 30 WHOLESALER-RESELLER AUDITS PENDING REPLACEMENT OF EXPERIENCED AUDITORS. LOWER PRIORITY BEING GIVEN TO (A) FOLLOW-UP AUDITS; (B) AUDITS OF LARGE HEATING OIL DEALERS; (C) AUDITS OF PROPANE DEALERS; (D) VIOLATIONS AT AIRPORTS; AND (E) AUDITS OF CHAIN STORES SELLING MOTOR OIL.
II. (NEW YORK)	FOURTH QUARTER ALLOTMENT.	NO ADVERSE EFFECT TO INHIBIT CURRENT OPERATIONAL REQUIREMENTS.
III. (PHILADELPHIA)	FOURTH QUARTER ALLOTMENT.	NO ADVERSE EFFECT TO INHIBIT CURRENT OPERATIONAL REQUIREMENTS.
IV. (ATLANTA)	REORGANIZATION OF COMPLIANCE RESULTING IN DECREASE OF COMPLIANCE SKILLS MIX, FOURTH QUARTER ALLOTMENT DEFICIENT BY $25,000 OVERALL.	DELAY PARTS OF REORGANIZATION PLAN UNTIL NEXT FISCAL YEAR. UNABLE TO ACCOMPLISH PRIORITY MISSION PROJECTS DUE TO LIMITED TRAVEL FUNDS AND QUALIFIED PERSONNEL.
V. (CHICAGO)	FOURTH QUARTER ALLOTMENT.	NO ADVERSE EFFECT TO INHIBIT CURRENT OPERATIONAL REQUIREMENTS, BASED ON ASSURANCES OF FEA MANAGEMENT AND ADMINISTRATION OFFICIALS THAT ADDITIONAL MONIES WOULD BE AVAILABLE AT A LATER DATE.
VI. (DALLAS)	FOURTH QUARTER ALLOTMENT DEFICIENT BY $50,000 TRAVEL; BY $13.000 EQUIPMENT; BY $53,500 OTHER CATEGORIES FOR A TOTAL DEFICIENCY OF $116,500.	REDUCED TRAVEL WOULD RESULT IN REDUCED COVERAGE OF PLANNED AUDITS OF SMALL REFINERS, OIL PRODUCERS, GAS PRODUCERS, WHOLESALE SUPPLIER RESELLERS, AND RETAILERS. CURTAILMENT OF TRAVEL WOULD DELAY COMPLETIONS OF ALL ON-GOING WORK AND DELAY SCHEDULED STARTS AT OTHER THAN POST OF DUTY LOCATIONS. SHORTAGE OF FUNDS FOR EQUIPMENT AND SUPPORTIVE (OTHER) COSTS FOR 95 ADDITIONAL STAFFING WILL AFFECT AUDITS OF SMALL REFINERS, ALL WORK ON OIL PRODUCERS, WHOLESALE SUPPLIER RESELLERS, AND RETAILERS.

IMPACT OF FOURTH QUARTER ALLOTMENTS

ON

REGIONAL OPERATIONS

REGION	IMPACT CRITERIA	IMPACT STATEMENT(S)
VI. (DALLAS) - CONTINUED		IT IS PROPOSED THAT VACANCIES WILL NOT BE FILLED IN ORDER TO PROVIDE REPROGRAMMING OF COSTS TO THE AFOREMENTIONED AREAS. THE SUBSEQUENT SMALLER STAFFING WOULD RESULT IN REDUCED AUDIT COVERAGE IN REFINERY, OIL PRODUCER, GAS PROCESSING PLANT AND RESELLER AREAS.
		PRINCIPAL PROJECTS SUBJECT TO IMPAIRED INVESTIGATIONS INCLUDE THE REFINERY AUDIT REVIEW PROGRAM. PROJECT PRODUCER, AND THE UTILITY SUPPLIER PROJECT. PROGRESS AND COMPLETION WILL BE DELAYED AT LEAST 30 DAYS IN EACH PROJECT.
VII. (KANSAS CITY)	FOURTH QUARTER ALLOTMENT DEFICIENT BY $55,000 OVERALL.	BUDGET DOES NOT ALLOW FUNDS FOR FILLING VACANCIES.
VIII. (DENVER)	FOURTH QUARTER ALLOTMENT DEFICIENT BY $22,100 OVERALL.	BUDGET WILL NOT PERMIT THE ACQUISITION OF FIVE (5) NEW AUDITORS THIS FISCAL YEAR DUE TO LACK OF TRANSFER COSTS.
IX. (SAN FRANCISCO)	FOURTH QUARTER ALLOTMENT DEFICIENT BY $200,000 OVERALL.	DEFERRAL OF EXISTING RECRUITMENT ACTIONS UNTIL NEXT FISCAL YEAR RESULTING IN A 10 PERCENT REDUCTION TO THE OVERALL EFFECTIVENESS OF COMPLIANCE PROGRAMS.
		DEFERRAL OF NEW STAFF HIRES WILL EFFECT WORK IN THE PRODUCER, PROPANE, AND WHOLESALE/RETAIL, AND THE UTILITIES INVESTIGATION AREAS.
		TRAVEL WILL BE REDUCED BY 60 PERCENT THROUGH MAY AND STOPPED FOR THE REMAINING MONTH OF JUNE WHICH WILL HAVE THE EVENTUAL IMPACT OF TERMINATING ON-GOING AUDITS AND REVIEWS UNTIL AFTER JULY 1.
X. (SEATTLE)	FOURTH QUARTER ALLOTMENT DEFICIENT BY $21,000 OVERALL.	CASE WORK ON WHOLESALER AND PROPANE REVIEWS WILL BE REDUCED DUE TO TRAVEL LIMITATIONS.
		WORK ON RESPONSES TO CONSUMER AND MARKETER PRICE AND ALLOCATION COMPLAINTS WILL ALSO BE REDUCED.
		POSTPONEMENT OF NEW HIRING UNTIL FY 76. THE RELEASE OF TEMPORARY POSITIONS AND THE CURTAILMENT OF OVERTIME WILL GREATLY INHIBIT OTHER COMPLIANCE AND CONSERVATION AND ENVIRONMENTAL ACTIVITIES.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MEMORANDUM

APR 30 1975

TO: Fred W. Stuckwisch
Associate Assistant Administrator
for Compliance
Office of Regulatory Programs

FROM: Charles Merrill CJM
Program Operations
Office of Compliance

THRU: Eugene E. Guziewicz, Acting Director
Program Operations
Refinery Audit and Review Program
Office of Compliance

SUBJECT: Additional Problem Areas - Region VI

1. The following additional problems have surfaced in Region VI subsequent to my memorandum of March 13, 1975 re: same subject:

   (c) The draft NOPV on

   was received in Houston on January 25, 1975, subsequent to preparation of the draft NOPV). This particular NOPV is not listed on the April 1, 1975 inventory of Region VI RARP NOPV's since the NOPV had apparently been lost between Houston and Dallas. It must now be re-processed in accordance with April 8, 1975 memo from Region VI.

2. Other problems which have surfaced include: (1) the establishment of new positions for "reviewer-conferee" without advice or approval as to purpose and function; (2) improper reporting on bi-weekly reports; e.g., the number of auditors reported as assigned to RARP are going down rather than up; RARP auditors assigned to training are incorrectly shown as working on audit modules; and, (3) failure to forward National Office messages to Audit Team Leader and Area Manager, e.g., instructions to pass on draft Consent Agreement, initiate special audit on jet fuel, and issue Draft Remedial Order on

3. The major problem which continues to contribute to low morale and productivity in Region VI is, in my opinion, the seeming inability of Region VI to effect timely disposition of the many old outstanding issues.

Internal: Blackwell
Stuckwisch

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

May 15, 1975

MEMORANDUM FOR TOM NOEL
ROBERT MONTGOMERY

FROM: Gorman Smith

SUBJECT: Possible Amendments to the FEA Act

As we consider amendments we might recommend in the entirely likely event that Congress decides to extend the FEAA, I urge the consideration of two:

1. Request the personnel hiring authority now used by ERDA and NRC under the provisions of Section 161d of the Atomic Energy Act of 1954 (42 USC 2201(d)).

   The justification: FEA has the same kind of requirement for technically qualified personnel, especially in Conservation and Environment, Energy Resource Development, and Regulatory Programs, that ERDA has with respect to its developmental missions and NRC has with respect to its regulatory mission. If you think that this is too broad to sell, then, as a minimum, ask for the 161d authority for the regulatory programs area, using the same rationale that gave that authority to NRC.

   I believe it impossible to overestimate the extent to which the requirement to conform to every jot and tittle of the CSC regulations impedes the ability of this agency to do what the Congress told it to do.

2. Request the addition of language to the Act making it clear that FEA's compliance staff are Federal officers under whatever title of the USC it is that makes it a crime to hit one with a baseball bat. Now, their only protection from assault is as private citizens. They must get a local law enforcement officer to go with them in any troublesome cases, and this has not always proven easy to do or even effective. If assaulted, the only recourse, as I understand it, is the unrealistic avenue

of a civil suit brought by our employee against the offender, or a complaint registered with the local law enforcement office.

Our experience has been that such complaints get even less response than do complaints to FEA about violations of our regulations.

cc: John Askew
John Hill
Eric Zausner

DELAYS IN FEA'S ENFORCEMENT PROCESS

FEDERAL ENERGY ADMINISTRATION

October 7, 1974

Eugene Guziewicz
Chief, Major Refinery Audit Branch

REQUESTS TO GENERAL COUNSEL, Washington, D.C.

All Regional Directors - C & E
All Area Managers

We have noted that several requests have been made by RARP Audit Teams of the General Counsel, Washington, D.C., for technical aid in the resolution of a problem. It has also been noted that replies to these requests have not only been slow, but in some cases non-existant. Further, it has been difficult to trace through due to the number of personnel involved in rulemaking etc. in General Counsel.

In order to facilitate the resolution of these problems in the future, it is requested that such requests are forwarded directly to the responsible analyst in Washington, so that we may control such requests and be in a position to obtain timely answers from General Counsel.

FEDERAL ENERGY ADMINISTRATION

Date:

Reply to Attn of: Director, Program
Policy and Review Staff

Subject: Questions and Answers Submitted Via Bi-Weekly Narrative

To: Regional Director
Compliance and Enforcement
Region I

The delay in responding to your questions is unconscionable, for which I accept full responsibility. It was an error on the part of my staff that caused the delay.

The attached have been cleared and approved by General Counsel. The remainder of your questions are being cleared by General Counsel. Upon receipt, I will forward them to you. Please accept my apologies for this delay.

Chris C. Garringer

Chris C. Garringer

Attachment

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ADMINISTRATOR

27 MAY 1975

MEMORANDUM FOR: MR. ROBERT E. MONTGOMERY, JR.

SUBJECT : Directives Concurrence

Reference our recent conversation. The following directives are in your office for concurrence.

May I please have your assistance in expediting their clearance for publication?

0103, Advisory Committee Management

0265, Project Review Board for Proposed Contracts, Change No. 1

0270, Personnel Security Program

0271, Inspections and Audits Manual

Thomas E. Noel
Acting Assistant Administrator
Management and Administration

Bob:
Some of these started out last year. Thanks.
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Date: May 20, 1975

Reply to Attn of: ODP:FC

Subject: Status Report -- Directives

To: Thomas E. Noel
Acting Assistant Administrator
Management and Administration

Following is a listing of directives completed and in process:

0103, Advisory Committee Management, has been cleared by all officials with the exception of the General Counsel. (Suspense date: 3/28/75)

0222, Overtime Pay and Compensatory Time, in process of being prepared in final. (Suspense date: 4/25/75)

0240, Travel, printed and distributed as of 5/14/75.

0241, Apportionment and Assignment of Parking Space, in process of being prepared in final.

0265, Project Review Board for Proposed Contracts, Change No. 1, cleared by all officials with the exception of the General Counsel. (Suspense date: 1/9/75)

0270, Personnel Security Program, cleared by all officials with the exception of the General Counsel. (Suspense date: 11/1/74)

0271, Inspections and Audits Manual, cleared by all officials with the exception of the General Counsel (Suspense date: 1/8/75)

0303, Retention and Storage of Technical Publications and Reports, printed and distributed as of 5/14/75.

0230.2, Employment (Chapter 1, Merit Promotion Program), entered final clearance process April 25, 1975. Submitted to Mr.Pouliot April 28 for signature. Directive returned to Office of Personnel April 29 for revision to title page. Directive resubmitted to Mr. Howell on May 20.

0255, Directives and Internal Publications System, Change No. 1, printed and distributed as of May 6, 1975.

R A H
Ralph A. Howard
Associate Assistant Administrator
for Administrative Management

Attachments:
0240
0303
0255(Change 1)

The following is a chronology of events which occurred in the Federal Energy Administration's handling of violations by a major oil refinery. FEA discovered the violations, amounting to more than $18,000,000 last summer--almost a year ago. As of June 17, 1975, FEA had not yet resolved these violations. The chronology was prepared by Theodore Haze, a case analyst at FEA's National Office.

MAJOR REFINING CO.

July 12, 1974	NOPV issued to company - Drafted by FEA National Office
July 29, 1974	Company's Response to NOPV - three papers.
July 31, 1974	Meeting in Washington - Company and FEA
August 5, 1974	Copy of replies submitted to FEA General Counsel.
August 8, 1974	FEA meets with company in Houston to discuss foreign transaction.
August 12, 1974	Letter sent to auditor to give to company indicating area agreed on in principal.
September 4, 1974	Received request from Company to exempt items dated August 27, 1974. Sent to FEA General Counsel.
September 9, 1974	Request sent to FEA General Counsel - Foreign transaction decision
September 12, 1974	Estimated cost pools - by Company
September 13, 1974	Informal meeting in Houston on NOPV to resolve issues. Attending - Company Attorneys and FEA National Office and Region VI Officials.
September 18, 1974	Request for Determination of Customer Class from auditor.
September 28, 1974	Resolved contract issue, consulted with General Counsel - passed on answer to auditor.
October 9, 1974	Proposed settlement letter from company received.

October 10, 1974	Answers to General Counsel on foreign transaction issue questions to be raised.
October 11, 1974	Memo to Compliance and Enforcement Supervisor - Need to revise Company's settlement letter.
October 18, 1974	Telephone discussion - National Office Supervisor & Company? Content unknown.
October 24, 1974	Confirmation letter of telephone call with National Office Supervisor permitting company to institute certain changes in classes and base prices.
October 29, 1974	Received foreign transaction invoices (38 folders) from Houston.
October 30, 1974	Invoices (38) dealing with foreign transactions supplied to General Counsel.
November 15, 1974	Company A - discussion with Company to include in December 1974 revised 96's.
November 20, 1974	Attempt to draft up settlement letter.
December 5, 1974	Visited Houston - status of audit (2nd cycle).
December 10, 1974	Information on JP-4 and Company B processing agreement requested from auditor to enable me to draft settlement letter.
December 12, 1974	National Office Supervisor decides I should go to Houston and sit down with auditor to draft settlement agreement.
December 12, 1974	Discussion with Region VI supervisor of my going to Houston to work on settlement agreement. Conditions of my coming to Houston

	were draft in writing, every issue National Office agreed to with Company and have FEA National Office or myself sign them and bring them with me, since he is not sure what was agreed to and may not agree to and may not agree with Washington or want his people involved with the settlement at all. The requirement was impossible to meet and plan to go to Houston was concelled.
December 16, 1974	Discussed settlement issues with auditor over the phone and informed him of concellation of my trip to Houston. Auditor informed me he had been pulled off of settlement and was working on speculator per orders of Region VI official.
December 20, 1974	Some verbal information received from auditor on Company B agreement and JP-4.
December 27, 1974	Attempting to draft settlement again. Draft sent to General Counsel.
December 31, 1974	Letter to FEA National Official from Company mentioning agreement on certain issues.
January 7, 1975	Draft settlement received from General Counsel with his comments.
January 10, 1975	Settlement letter redrafted with General Counsel's comments.
Junuary 10, 1975	Request to auditor by me for additional information on the JP-4 and Company B agreement for use in the settlement.
January 14, 1975	Another request to auditor for information for the settlement.
January 15, 1975	FEA National Official in letter to Company lifts price restrictions.

January 25, 1975	Another draft settlement letter prepared.
February 4, 1975	Received Company letter on base prices. (will have to be part in new 96's under settlement). Decision required on Company's request.
February 5, 1975	Another draft of the settlement prepared.
February 10, 1975	Settlement draft - revised by General Counsel.
February 20, 1975	Draft copy of settlement sent to auditor and Region VI official.
February 25, 1975	Region VI official objects to one point in settlement - Change made.
March 1, 1975	Company letter passed on to Exceptions Different base period requested.
March 7, 1975	Another draft of settlement letters sent to Region VI for comments. Auditor and Region VI official make comments.
March 12, 1975	Settlement redrafted with Region VI comments for Director - FEA Refinery Audit Review Program.
March 20, 1975	FEA National Office decides not to sign agreement. Wants it initiated by the company - not us.
March 24, 1975	Region VI was requested to have Company initiate new agreement encompassing the provisions in our letter.
April 14, 1975	Our settlement letter not used - copy of a draft settlement letter prepared by Region VI submitted to us.
April 16, 1975	Region VI official changed direction - wants letter to be initiated and signed by Regional Administrator. (auditor told me)

April 21, 1975	General Counsel refuses to look at another settlement letter until company has a chance to look at one and comment on areas of dispute.
April 21, 1975	Memo mailed and sent to Region VI - Region VI official give company a look at one of the settlement letters. (they haven't seen any letter).
April 22, 1975	Region VI auditor directed to give our settlement letter to company for their comments.
April 25-May 5, 1975	Company responses to Region VI letter and objects to Items 4 and 5.
May 13, 1975	Revised copy of settlement letter with companies remarks received - company objects. They believe some issue had been settled.
May 20, 1975	Region VI notifies us they are preparing Remedial Orders for issuance to the company.
May 23, 1975	More legible copy of revised settlement received from auditor.
May 20-30, 1975	Company called a number of times requesting meeting with FEA National officials and General Counsel. Message possed on to FEA National official.
June 2-6, 1975	Company called FEA National officials and General Counsel National officials verbally agreed tenatively to a meeting with Wayne Gifford, Region VI C&E Director.
June 4, 1975	Revised schedules of 96's sent by Company and letter confirming a tenative meeting.
June 11, 1975	Letter from FEA National official sent to company agreeing on meeting.
June 12, 1975	Resubmission of updated company cost pools

FEA POLICY AND PROCEDURES REGARDING POSSIBLE CRIMINAL VIOLATIONS

Director, Enforcement Policy
and Program Review Staff

Acting Associate Assistant Administrator
Office of Compliance

On or about April 10, 1975 my office was informed by Wayne Gifford that a criminal investigation was in progress against the subject. He further informed us that the FBI had entered the case. I contacted Gifford on April 17 to determine how the case had been handled and why the FBI was involved. He advised the following:

1. Sometime in the past Bill Jobe, Area Manager, Houston Area Office had been introduced to the local FBI Agent-in-Charge. Jobe had consulted with the agent from time to time on procedural matters.

2. When criminal implications were noted in the subject, the FBI agent was contacted for advise on the issuances of a "Miranda" warning to the suspected violator. The FBI agent advised that the warning should be issued. Jobe then contacted Regional Counsel for concurrence and concurrence was obtained.

3. Later the same day the FBI agent with the Assistant U.S. Attorney came to Jobe's office. After some discussion, the AUSA ordered the FBI agent to enter the case.

4. After all this had transpired Gifford then contacted John Carter because the case involved an electric utility.

I asked Gifford why advise on Miranda was sought from the FBI rather than Regional Counsel. His explanation was the relationship between the FBI agent and Jobe.

-2-

I asked why he had not followed instructions contained on page six of the utilities program guide (copy attached). He said he did not want to get Region IV involved and he would not call Grimes [illegible] he would call National (my office) and we would call Grimes but that he would not call direct.

I told him that instructions were to seek guidance from Regional Counsel on these matters. He stated he was aware of that, but was not displeased with the manner in which the case is now being handled. The FBI is pursuing the criminal aspects of the case while FEA is pursuing the civil.

Comments

Procedural instructions on the handling of criminal cases were issued in the original manual. Attached is a page from Chapter 900 setting forth that policy. Clarification of that policy was issued in a revised Chapter, re-numbered 1000, on August 23, 1974. These instructions were not followed.

Instructions relative to the handling of criminal cases under the utilities program are contained in the attached page six from the Utilities Program guide. They were not followed.

The field complains that we have not issued definitive instructions in many areas. This may be true, but in this case it did not matter. If the regions disagree with a policy they should follow it until an accomodation can be made.

As a result of the manner in which the case was handled, we now have another agency involved. It is entirely possible this case could have been successfully concluded by FEA.

I think this is another example of Region VI going its own way.

Chris C. Garringer

/75

FEDERAL ENERGY ADMINISTRATION
REGION I, BOSTON, MA 02114

Date: 14 May 1975

Reply to
Attn of: Bruce A. Webster

Subject:

To: Auditor
Through: Paul F. Maloy, Director, Compliance and Enforcement Division

Referencing your April 28, 1975 memorandum and attachments concerning the potential for criminal fraud prosecution of the above-named firm, it is Agency policy and a matter of practical expedience that all reasonable avenues for effecting the objectives of 10 CFR Chapter II through civil compromise at the Agency level should be exhausted before referral to the appropriate U.S. Attorney for criminal or other judicial proceedings.

Accordingly, it is requested that the subject firm and counsel be advised that the compliance agreement cannot be accepted by this Agency until the discrepancies in the May 15, 1973 selling price alluded to in your investigatory file have been accounted for or satisfactorily explained. This may be handled through amendment of your prior NOPV, conference, or other such means as you deem appropriate.

Should further Agency proceedings fail to produce a mutually satisfactory compliance agreement, the possibility of drafting and recommending referral to the Department of Justice will be considered.

FEDERAL ENERGY ADMINISTRATION
REGION I, BOSTON, MA 02114

Date: April 28, 1975

Reply to Attn of: Compliance & Enforcement Division
Boston, Massachusetts

Subject: Request for Advisory Opinion

To: Regional Counsel
Boston, Mass.

Facts:

Mass. was the subject of an audit to determine its compliance with the FEA Price Regulations 10 CFR 212.93.

During the course of the audit extensive erasures were found in the records used to substantiate the base period (5/15/73) cost and selling price of the various grades of gasoline sold. As a result of these erasures, the FEA Auditor pursued 3rd parties in the form of subpoenas, affidavits and contact memos. After analysing this 3rd party information there appears to be a discrepancy between what the company's books and records show to be the base period selling price and the selling price established through this 3rd party analysis.

Defense: When asked, by the FEA Auditor, why there were extensive erasures in the base period books and records, the bookkeeper indicated she had broken her hand in May and had to write with her left hand. also stated that no one had access to their books except their accountant. the firm's accountant, stated that he does the payroll and year end write up. uses the information and records submitted by for this is w/up work. He also stated he has no record of the unit selling price on 5/15/73, all he maintains are bank statements, payroll records and daily worksheets prepared by were asked by the FEA Auditor if they had altered any figures on the daily worksheets for May & June 1973, to reflect a higher unit selling price for gasoline sold, they each said they had not.

Question: Should the Compliance & Enforcement Division -

1. Close the case on the conditional Compliance Agreement previously secured. This Agreement is based on information presented by the owner.

2. Pursue this as a criminal case having potential for litigation and confront the alleged violator with the facts obtained by 3rd party contacts.

Response requested.

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Auditor

MANPOWER AND STAFFING FOR FEA ENFORCEMENT PROGRAMS

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

September 30, 1974

MEMORANDUM TO: John Daniels
Associate Assistant Administrator
Management Sciences and Budget

FROM: Gorman C. Smith
Assistant Administrator
Operations, Regulations and Compliance

SUBJECT: Revised Comments: "Revised FY 75 Regional Programs and Staffing"

REFERENCES: (a) Comments: "Revised FY 75 Regional Programs and Staffing" memo from Gorman Smith to John Daniels

(b) Meeting, September 24, 1974 concerning regional staffing; OR&C represented by Mr. A. Landesman

I have considered the questions received concerning comments (Reference a) to the regional staffing proposals as conveyed to me through Mr. Landesman, and offer the specific recommendations summarized in Table 1.

TABLE 1

Recommended Regional Staffing Levels

	CURRENT LEVEL	BY 12/31/74 1/	BY 6/30/75 2/
Operations	401	205	183
Compliance & Enforcement	863	803	711
ERO	0	21	85
Conservation/ Environment	0	21	87
Other Functions	453	440	424
TOTAL	1717	1490	1490

1/ Assumes crude price equalization November 1, 1974.
2/ Assumes "Class of Trade" Regulatory Approach, et al.

Operations: The current staffing level in operations is 401. I propose that this be cut to 205 by 31 December 1974. This decrease in staff assumes the adoption of crude price equalization 1 November 1974 and a drop in allocation cases to be treated at the regions. Any delay in adoption of crude price equalization beyond November 1 would correspondingly delay the 205 staffing level. By 30 June 1975, given "class of trade" regulations, we should plan only a voluntary allocation program in the regions, while maintaining a standby allocation system. This will allow a minimal staffing in operations by this date. Together with a possibly reduced C&E workload at that time, a composite strength of 894 will be established for 30 June, with the exact distribution between operations and compliance to be established dependent upon relative caseloads. This should be accompanied by some staffing flexibility allowing personnel reassignment to assist in other areas of Regional responsibility as needs dictate. The breakout of Operations staffing by Regions is shown in Table 2. The 30 June levels are those of Proposal III in your original memo.

Compliance and Enforcement: As I pointed out in my first memo, the C&E program is a very visible symbol of agency intentions and objectives, and for this reason receives a great deal of attention from Congress, other agencies and the public. It is intended to act as a deterrent to abuse of the regulations. Since its effectiveness in this mission is directly related to thoroughness and frequency of audits, decreases in manpower must be gradual. The current level of 863 will be dropped to 803 by 31 December 1974. A further reduction by 30 June 1975 is projected based upon the expected early clarification of various pricing issues that have been the subject of numerous investigations, and based upon the expectation that price controls will be lifted by 6/30/75 except for certain products (crude, SNG, propane). As indicated in Table 1, a combined total for operations and compliance of 894 for June 30, 1975 is projected, with 711 assigned to compliance and 183 to operations. Actual workload experience may dictate a need for a different mix of the 894 positions, but any such changes would be known sufficiently in advance of 30 June to permit implementation. The distribution of the compliance staff among the regions is shown in Table 3. 1/ This staffing is to be assigned as follows:

12/31/74: RARP - 188 (158 Refineries, 30 Natural Gas Processing Plants) Producers;(Old/New/Released/Stripper Oil) - 212; Propane Manufacturing/Distributors/Retailers - 94; Wholesaler/Retailer - 309

6/30/75: Same as above except Wholesaler/Retailer dropped to 217.

1/ Detailed breakdown by products for each region will be forthcoming in a separate memo.

Conservation, Environment and Energy Resource Development: I am in favor of initiating regional programs in these areas at the earliest possible date. I recommend that by 31 December 1974, a total of 42 personnel be assigned to these functions and that by 30 June 1975, this be increased to 172 (87 to conservation; environment; 85 to ERD), as suggested in Proposal I.

Other Functions: Given the ceiling figure of 1490 for the regions, I recommend that ISDAD, Management and the RA's Office be allotted a combined level of 440 by 31 December 1974, to be reduced to 424 by 30 June 1975.

TABLE 2

Operations Division Regional Staffing

Regions

	I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
12/31/74	9	17	20	37	41	27	16	9	21	8	205
6/30/75	8	15	18	33	37	24	14	8	19	7	183

TABLE 3

Compliance Division Regional Staffing

Regions

	I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
12/31/74	16	35	63	80	103	284	93	45	62	16	803
6/30/75	12	31	51	63	91	271	82	39	54	12	711

BYaffe:gp 9/30/74 Rm. 5002 - 20th St. Bldg.
254-8377

CC: Office Chron
Yaffe
Landesman
Vernon
Gorman Smith ✓

October 2, 1974

Director, Compliance and Enforcement Division
Region I, Boston

Revised Comments: "Revised FY 75
Regional Programs and Staffing"

Regional Administrator, Region I, Boston

I have reviewed Gorman C. Smith's memo to John Daniels. It was encouraging to me that at least one person in headquarters is cognizant of the fact that "the C&E program is a very visible symbol of agency intentions and objectives, and for this reason receives a great deal of attention from Congress, other agencies and the public. It is intended to act as a deterrent to abuse of the regulations. Since its effectiveness in this mission is directly related to thoroughness and frequency of audits, decreases in manpower must be gradual".

I certainly have no quarrel with Mr. Smith's assessment of the value of a strong compliance program. I find it incredible that after making such an assessment of the C&E program that he would go on to rape this program in seven out of ten regions.

In my memo to you dated September 25, 1974, for the same reasons now being advanced by the Assistant Administrator for Operations, Regulations and Compliance, I told you that a cut in the compliance staff would be unwise and possibly illegal and that we need a staff of 100. I have not changed my mind in the past week.

I have been told that the staffing ceilings for the regions and for headquarters were set by the Office of Management and Budget. I think that this is unlikely. I believe that OMB would establish a total ceiling for the agency and the agency would set the ratio between headquarters and regional staffing. Therefore, I again urge that you insist on a staffing level of 100 for C&E. You should insist that the level of staffing in headquarters be reduced to accomplish this.

PFMaloy:jlf:10/02/74

At the proposed level of compliance staffing for this region we would be unable to maintain visibility as a symbol of agency

intentions and objectives because we would be unable to respond to complaints by the public. Neither would we be in a position to protect the share of the market of independent businessmen.

Our failure to respond to these kinds of complaints would give the agency attention but not the desired attention from Congress, other agencies and the public who would recognize the public-be-damned attitude implicit in this size staff.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

October 4, 1974

MEMORANDUM TO: John Daniels
Associate Assistant Administrator
Management Sciences and Budget

FROM : Gorman C. Smith
Assistant Administrator
Operations, Regulations and Compliance

SUBJECT : Regional Staffing for Compliance and Enforcement

REFERENCE : Memo of September 30, 1974, Subject: Revised Comments: "Revised FY 75 Regional Programs and Staffing"

The attached table shows the workload analysis used to determine the distribution of C&E personnel among the regions for 30 June 1975. The total C&E regional force at that time is to be 711, divided as follows:

RARP: 188
Producers: 212
Propane: 94
Wholesaler/Retailer: 217

The referenced memo provided the breakdown of these personnel by region for the 30 June 75 date, and also provided a breakout for 12/31/74, based on workload analysis. The figures for June are still valid, but a review of the December figures indicates that while they are based on valid workload analysis, the personnel shifts which are implied will impose unnecessary hardships, requiring substantial staffing up or down in a short period. Therefore, the levels for 12/31/74 have been refined, and are included in the summary table as follows:

COMPLIANCE & ENFORCEMENT
REGIONAL STAFFING

Region:	I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
ON BOARD	71	120	103	113	147	106	50	34	89	39	863
12/31/74	45	85	80	92	122	180	70	39	70	20	803
6/30/75	12	31	51	68	91	271	82	39	54	12	711

COMPLIANCE & ENFORCEMENT
REGIONAL STAFFING & REDISTRIBUTION
TOTAL STAFF AS OF JUNE 30, 1975 - 711

[illegible]		I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL	
[illegible]	Universe	0	0	1	317	1,048	12,409	3,166	999	902	48	18,881	
[illegible]	Pct. Factor [illegible]	0	0	0	92.4	305.76	3,616	932.2	291.3	263	14.4	5,505.7	
	Actual Manyears Req'd	0	0	0	3.6	11.8	139.3	35.6	11.22	10.13	.54	212	212
[illegible]	Universe	979	1,343	4,471	3,574	5,413	4,116	4,013	1,923	2,514	1,230	29,596	
[illegible]	Pct. Factor 13.7%	134.1	154	612.5	489.6	741.6	566.6	549.8	263.4	344.4	168.5	4,054.5	
[illegible]	Actual Manyears Req'd	5.6	7.7	25.8	20.6	31.2	23.8	23.1	11.1	14.5	7.1	170.1	
[illegible]	Universe	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	51,771	17,141	9,364	23,078	9,360	291,578	
[illegible]	Pct. Factor [illegible]	[illegible]	555.3	564.9	[illegible]	[illegible]	1190.7	394.2	215.4	530.6	215.3	[illegible]	
[illegible]	Actual Manyears Req'd	3.2	4.3	4.0	9.3	9.0	8.5	2.8	1.5	3.8	1.5	47.9	218
[illegible]	Universe	0	5	4	11	28	115	22	7	14	4	210	
[illegible]	Pct. Factor 10%	0	.5	.4	1.1	2.8	11.5	2.2	.7	1.4	.4	21	
	Actual Manyears Req'd	0	.08	.06	.17	.42	1.74	.33	.11	.21	.06	3.2	
[illegible]	Universe	[illegible]	940	641	[illegible]	1,798	1,848	1,275	856	178	141	10,133	
[illegible]	Pct. Factor [illegible]	116.6	338.4	[illegible]	776.3	647.3	628.1	459	308.2	64.1	50.8	3,648	
[illegible]	Actual Manyears Req'd	2.9	8.3	5.6	19.1	15.9	16.2	11.3	7.6	1.6	1.2	89.8	93
Refineries A*	Actual Manyears Req'd	0	9	11	5	13	33	3	6	11	0	85	
B*	Actual Manyears Req'd	0	0	1	4	4	14	4	2	2	0	31	
C*	Actual Manyears Req'd	0	1	1	4	5	16	0	4	9	2	42	
D*	Actual Manyears Req'd	0	1	2	2	1	18	2	2	2	0	30	
Total [illegible]		0	11	15	15	23	81	9	8	24	2	188	188/711

[illegible] Redistribution

	I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
[illegible] Req'd	10.2	27.5	44.2	59.1	79.9	236.7	71.8	34.6	47.4	10.8	622.1
Clerical Req'd (7:1 Ratio)	1.5	3.9	6.3	8.2	11.4	33.8	10.3	4.9	6.8	1.6	88.9
Total People	11.7	31.4	50.5	67.8	91.3	270.5	82.1	39	54.2	12.4	711
[illegible]	71	120	103	113	147	106	50	34	89	30	863
Total Redistribution	-59.3	-88.6	-52.5	-45.2	-55.7	+164.5	+32.1	+5	-34.8	-17.6	-152

A* = over 75,000 BBLS/day B* = 15,000 to 75,000 BBLS/day C* = under 15,000 BBLS/day D* = Natural Gas Processing Plants

FEDERAL ENERGY ADMINISTRATION

Date: October 4, 1974

Reply to Attn of: Avrom Landesman

Subject: Proposed Reduction in Regional Compliance Staffing Level

To: Mr. Gorman C. Smith
Acting Assistant Administrator
Operations, Regulations and Compliance

You asked me to respond to the proposal that Regional Compliance staffing levels be reduced at a more accelerated pace than those you have formally proposed. The ORC proposal calls for a reduction from the current 863 level to 803 by yearend 1974 and a further reduction to 711 by June 30, 1975.

I believe that the ORC-proposed reductions represent the absolute minimum resources necessary to carry out FEA's statutory mandate. Moreover, given the new and expanded enforcement missions we are proposing (expansion of refinery audits, gas processing plant audits, and investigation of producer pricing), there will be a serious strain on our enforcement resources during the entire transition period.

We must expect loss of workload time due to the necessary geographic redeployment of personnel. That program is also likely to induce resignations on the part of people who elect not to accept positions in the Regions whose staffing level will be increased. There will be an additional time loss due to the mandatory retraining in investigative technique for investigators being transferred to work on producer cases and propane cases.

Since we are adding 100 auditors to RARP, substantial retraining in audit technique will be necessary for this group. I estimate that, in the aggregate, as many as 99 compliance people will have to be transferred by December 31, 1974, and an additional 92 by June 30, 1975. In the aggregate, the total number of people requiring some retraining will be at least 400.

It should be noted that the changes in the enforcement program are designed to take into account the changes in the petroleum industry brought about from elimination of shortages in certain major product lines and the expectation of novel regulatory approaches to control the supply and price of products deemed to remain under market pressures. Accordingly, it will be necessary for the redeployed compliance staff to gain some familiarity with market structures and characteristics in segments of the industry not previously covered by the enforcement program. The staff will also have to master new regulations and their applicability to conditions disclosed by audits and investigations.

In light of the factors described above, it would be very unwise to reduce FEA's enforcement resources below the staffing levels contained in the latest CRC proposal.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

Oct 16, 1974

OFFICE OF THE ASSISTANT ADMINISTRATOR

MEMORANDUM FOR: Assistant Administrators
General Counsel
Director, Congressional Affairs
Director, Communications & Public Affairs
Director, Intergovernmental, Regional and Special Programs
Regional Administrators

SUBJECT: APPROVED FY '75 REGIONAL PROGRAMS & STAFFING

The attached Regional Programs and Staffing are those agreed upon by the Assistant Administrators and approved by Mr. Sawhill. These plans both represent FEA's objectives and show the level of effort that will be committed toward accomplishing these objectives for the remainder of FY 1975.

To assist you in your staffing plans, we have provided two bench marks; the staffing level to be achieved by approximately December 31, 1974 and the level to be achieved by June 30, 1975. The December date is based on the assumption that the Crude Oil Equalization Regulations will go into effect November 1, 1974. Any change in the effective date of the regulations will, of course, cause a corresponding change in the aforementioned December staffing level deadline.

The required levels may be lower or higher than existing levels; in any case, these levels are to be obtained through responsible management and careful adjustment of existing manpower resources within the agency. In order to facilitate the adjustment to new staffing levels, a task team headed by Management and Administration and composed of staff from Intergovernmental, Regional & Special Programs; Operations, Regulations & Compliance; Conservation and Environment; and Energy Resource Development will be established. Further, as most of the potential problems in adjusting to the new levels will involve Personnel, that office has been asked to develop and distribute customized, region by region staffing guidance and plans by November 1, 1974. All offices concerned are to submit the name(s) of their team representatives to the Office of the Assistant Administrator for Management and Administration by October 18, 1974.

-2-

The final and most important aspect of the staffing plan is the alleviation of the hiring freeze. We are approximately 200 positions over ceiling in the regions and must attain the 1490 position level as soon as practical in the light of our budget restrictions. Obviously, however, some essential positions must be filled quickly. Therefore, we are instituting a general hiring policy that will allow each Regional Administrator the option of replacing one position for every five vacated until he reaches his authorized staffing level. This general policy should stay in effect until the customized regional staffing plans are developed by Personnel. After that time, the policy of "five for one" may vary from region to region. Further, as the serious budget situation is one of the main concerns, this general policy may have to be modified at any time. Complete control of hiring rates will be maintained by the Associate Assistant Administrator for Management Sciences and Budget, Mr. John Daniels. He will have final approval authority on all personnel actions for the regions. A problem we will have to watch very closely is the Dallas increase in Compliance and Enforcement. Dallas may not hire up to the full December 31, 1974 level of 206 positions or the June 30, 1975 level of 271 positions until we have determined how many qualified Compliance and Enforcement personnel in Boston and New York (since those two regions will be over ceiling) are willing to relocate to Dallas as well as how much relocation money is available.

In light of the foreseeable difficulties in implementing the regional programs and staffing, we thank you for your concern and ask for your continued support.

William W. Geimer
Director, Intergovernmental,
Regional & Special Programs

Leonard B. Pouliot
Assistant Administrator
Management and Administration

Enclosure

cc Personnel

Enclosure 1
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REGIONAL STAFFING AS OF 12/31/74

REGIONS	BOSTON	NY	PHILA	ATLANTA	CHICAGO	DALLAS	KC	DENVER	SF	SEATTLE	TOTALS
	I	II	III	IV	V	VI	VII	VIII	IX	X	
RA's OFC	27	26	23	31	30	29	25	27	27	23	268
Management (Includes Data Analysis)	14	16	16	17	18	18	17	14	16	17*	163
Regulations											
Operations	9	17	20	37	41	27	16	9	21	8	205
C&E	35	72	74	80	109	206	79	39	70	20	784
*(RARP)	(0)	(11)	(15)	(15)	(23)	(81)	(9)	(8)	(24)	(2)	(188)
Conservation and Environ.	4	7	4	5	10	3	2	2	2	2	41
ERD	1	2	2	2	4	4	2	7**	2	3	29
TOTALS	90	140	139	172	212	287	141	98	138	73	1490

* Now called Compliance Audit Review Division (CARD)
** Pilot Program

10/15/74

REGIONAL STAFFING AS OF 06/30/75

REGIONS	BOSTON	NY	PHILA	ATLANTA	CHICAGO	DALLAS	KC	DENVER	SF	SEATTLE	TOTALS
PROGRAMS	I	II	III	IV	V	VI	VII	VIII	IX	X	
RA's OFC	26	25	22	30	29	28	24	26	26	22	258
Management (Includes Data Analysis)	14	16	16	18	19	19	17	14	17	17	167
Operations	8	15	18	33	37	24	14	8	19	7	183
C&E	12	31	51	68	91	271	82	39	54	12	711
*(RARP)	(0)	(11)	(15)	(15)	(23)	(81)	(9)	(8)	(24)	(2)	(188)
Conservation and Environ.	8**	13	8	9	17	8	5	5**	8	5	86
ERD	6**	8	10	10	9	10	8	8**	9	7	85
TOTAL	74	108	125	168	202	360	150	100	133	70	1490

* Now called Compliance Audit Review Division (CARD)
** Totals will remain the same, but distribution may change within the region depending on the results of the pilot programs.

10/15/74

REGIONAL STAFFING BY PROGRAM
Regional Administrators Office

Function		I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
Immediate Office	12/31/74	4	4	4	4	4	4	4	4	4	4	40
	06/30/75	4	4	4	4	4	4	4	4	4	4	40
General Counsel	12/31/74	5	5	5	7	7	7	5	5	7	5	58
	06/30/75	5	5	5	7	7	7	5	5	7	5	58
Public Affairs&	12/31/74	3	3	3	3	4	4	3	3	3	3	32
Congress. Relations	06/30/75	3	3	3	3	4	4	3	3	3	3	32
EEO/Tng (Where applicable)	12/31/74	1	1	1	1	1	1	1	1	1	1	10
	06/30/75	1	1	1	1	1	1	1	1	1	1	10
Intergov. & Special Programs	12/31/74	6	5	2	8	6	5	4	6	4	2	48
		4	4	4	4	4	4	4	4	4	4	40
Intergov.	06/30/75	6	5	2	8	6	5	4	6	4	2	48
Special Programs		4	4	4	4	4	4	4	4	4	4	40
Exceptions& Appeals	12/31/74	4	4	4	4	4	4	4	4	4	4	40
	06/30/75	3	3	3	3	3	3	3	3	3	3	30
TOTAL	12/31/74	27	26	23	31	30	29	25	27	27	23	268
	06/30/75	26	25	22	30	29	28	24	26	26	22	258

10/15/74

MANAGEMENT

REGIONS		I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
Immediate Officce	12/31/74	2	3	3	3	3	3	3	2	3	2	27
	06/30/75	2	3	3	3	3	3	3	2	3	2	27
Financial Management	12/31/74	2	2	2	2	3	3	2	2	2	2	22
	06/30/75	2	2	2	2	3	3	2	2	2	2	22
Personnel Services	12/31/74	2	3	3	3	3	3	3	2	3	2	27
	06/30/75	2	3	3	4	4	4	3	2	3	2	30
Support Services	12/31/74	4	4	4	5	5	5	5	4	4	4	44
	06/30/75	4	4	4	5	5	5	5	4	5	4	45
Data Analysis	12/31/74	4	4	4	4	4	4	4	4	4	7*	43
	06/30/75	4	4	4	4	4	4	4	4	4	7*	43
TOTAL	12/31/74	14	16	16	17	18	18	17	14	16	17	163
	06/30/75	14	16	16	18	19	19	17	14	17	17	167

* Pilot program - Data Analysis combined with Energy Conservation and ERD under Project Independence.

10/15/74

Enclosure 1

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PROJECT INDEPENDENCE
(Combined ERD and Conservation and Environment Programs)

REGIONS	I	II	III	IV	V	VI	VII	VIII	IX	X	TOTAL
Lighting & FEMP	4	7	4	4	8	3	1	2	2	2	37
Insulation	0	0	0	1	2	0	1	0	0	0	4
Conservation-12/31/74	4	7	4	5	10	3	2	2	2	2	41
Lighting	4	8	4	4	10	4	1	1	4	1	41
Environment	3	3	3	3	3	3	3	3	3	3	30
FEMP	1	1	1	1	1	1	1	1	1	1	10
Insulation	0	1	0	1	3	0	0	0	0	0	5
06/30/75	8	13	8	9	17	8	5	5	8	5	86
ERD 12/31/74	1	2	2	2	4	4	2	7	2	3	29
1. Coal Supply	1	1	4	4	2	2	2	2	1	1	20
2. Oil&Gas to Coal	1	1	1	1	1	1	1	1	1	1	10
3. State Alternative Energy Sources	1	1	1	1	1	1	1	1	1	1	10
4. Oil Import Compliance	0	1	1	0	1	1	0	0	1	1	6
5. Oil&Gas Plans	.5	.5	.5	.5	.5	.5	.5	.5	.5	.5	5
6. Energy Facility Site	.5	.5	.5	.5	.5	1	1	.5	.5	.5	6
7. Federal Regional Council	.5	.5	.5	.5	.5	1	.5	.5	.5	.5	5.5
8. Surplus Property	1	1	1	1	1	1	1	1	1	1	10
9. Rocky Mountain Water	0	0	0	0	0	.5	0	1	1	0	2.5
10. Inventory of State&Local Financing Programs	1	1	1	1	1	1	1	1	1	1	10
TOTAL 06/30/75	6	8	10	10	9	10	8	8	9	7	85

10/15/74

Enclosure 1

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REGIONAL STAFFING BY PROGRAM
Operations and Compliance

REGIONS		BOSTON	NY	PHILA	ATLANTA	CHICAGO	DALLAS	KC	DENVER	SF	SEATTLE	TOTALS
		I	II	III	IV	V	VI	VII	VIII	IX	X	
Operat-ions	12/31/74	9	17	20	37	41	27	16	9	21	8	205
	06/30/75	8	15	18	33	37	24	14	8	19	7	183
Compliance &Enforc. (RARP)	12/31/74	35 (0)	72 (11)	74 (15)	80 (15)	109 (23)	206 (81)	79 (9)	39 (8)	70 (24)	20 (2)	784 (188)
Compliance & Enforc. (RARP)	06/30/75	12 (0)	31 (11)	51 (15)	68 (15)	91 (23)	271 (81)	82 (9)	39 (8)	54 (24)	12 (2)	711 (188)

10/15/74

OCT 25 1974

BOSTON GLOBE

FEA cuts staff monitoring fuel prices

By R. S. Kindleberger
Globe Staff

The Federal Energy Administration (FEA) has ordered its New England office in Boston to cut by two-thirds the personnel assigned to enforce fuel price ceilings. The cut was ordered despite the protest of an official in the Boston office that "our present staff is insufficient to do an effective job."

The reduction is part of a nationwide shift of FEA enforcement personnel from monitoring retailers and wholesalers to watching refiners and producers. The staff shuffle, ordered for New England and other regions in an Oct. 16 letter from Washington, is required in two stages and must be completed by June 30, 1975.

The FEA's regional administrator for New England, Robert W. Mitchell, yesterday defended the decision as having "a lot of merit."

Asked what would be left to prevent gasoline station owners and oil dealers from raising prices illegally, he replied: "Their consciences pretty much, and the fact that they are open to auditing. And they will be audited."

A confidential Sept. 25 memorandum from a Boston subordinate took a directly opposite position, however. Paul F. Maloy, regional director of compliance and enforcement, wrote Mitchell to "strongly object" to the proposed cutback in enforcement personnel.

"Without an adequate staff in this region," Maloy wrote, "we will not be able to carry out the congressional mandate to prevent unreasonable profits within the various segments of the energy industry because we would be unable to trace refinery overcharges back to the market place.

"For these reasons, we believe it would be unwise and possibly illegal to reduce the compliance and enforcement staff to 25. We believe that you should take a strong stand for a compliance staff of 100 in this region and insist that the increase come out of headquarters (in Washington) staff." (The enforcement staff in the Boston office now stands at 70.)

Mitchell originally opposed the cutback. "That was before the change in philosophy in the auditing procedure was made clear," he said yesterday.

He said that pending FEA proposals for equalizing crude oil prices nationwide should end the so-called two-tier pricing system and make it easier to control prices at the refinery. (The two-tier system refers to the fact that "old" domestic oil costs no more than $5.25 per barrel because of FEA price controls, while uncontrolled oil, both imported and newly drilled, costs about $11 per barrel.)

However, the FEA has been considering the price equalization proposals since well before Maloy wrote his Sept. 25 memo and Mitchell made known his initial opposition to the personnel cutbacks. FEA Administrator John Sawhill said Wednesday in Cranston, R.I., that no decision on the pricing proposals has been made.

Maloy said yesterday that he stands by the opinions he expressed in the memo. Because the FEA no longer receives many price complaints from consumers, he said, it has to initiate its own investigations, which requires personnel.

As evidence that illegal fuel price increases are still a problem, Maloy said the FEA has ordered $1 million in fuel price rollbacks and refunds to New England consumers since July 1.

In early September, the FEA found eight gasoline stations in Agawam, a suburb of Springfield, that were overcharging, Maloy said.

The New England Congressional Caucus, representing the 25 delegates to the House from this region, wrote Sawhill Oct. 9 to object to the proposed personnel reductions in regional FEA offices. That letter went unanswered, according to caucus director Jill Schuker, as did a letter from Sen. Abraham Ribicoff (D-Conn.).

"Sen. Ribicoff said this could have a serious detrimental impact on oil and gasoline consumers in Connecticut and New England, and he asked FEA Administrator Sawhill to reverse his decision," a Ribicoff aide said yesterday.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Regional Director, [illegible]

DATE: November 5, 1974

FROM : Donald B. [illegible], [illegible]
Compliance Audit [illegible]

SUBJECT: MAJOR REFINER AUDIT STAFFING

The recent Refinery Audit Staffing for Major Refiners was derived from numbers assigned to each major company. In general, we followed the recommendations of our Case Analysts and your auditors assigned to the particular company.

Attached is the breakdown by Region of the total manpower for all audits and the [illegible] assigned number of auditors for the [illegible].

You will notice that there are in some cases, additional auditors outside your Region assigned to the same company. These are [illegible] with an asterik* who will be [illegible] under the other Region, but are to [illegible].

The [illegible] is included [illegible]. These have now been [illegible] program.

REGIONS

	II	III	IV	V	VI	VII	VIII	IX	X	TOTALS
MAJOR REFINERS	8	10	11	14	45	3	-	13	-	104
SMALL REFINER	2	3	2	8	18	4	6	9	2	54
NATURAL GAS PLANTS	1	1	3	1	18	4	1	1	-	30
TOTALS	11	14	16	23	81	11	7	23	2	188

R.A.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

February 18, 1975

OFFICE OF THE ADMINISTRATOR

MEMORANDUM FOR: Assistant Administrators
General Counsel
Director, Congressional Affairs
Director, Communications and Public Affairs
Director, Private Grievances and Redress
Director, Intergovernmental, Regional and Special Programs
✓Regional Administrators

SUBJECT : 1975 Employment Levels

The personnel ceilings reflected in the attached are FY 1975 end-of-year employment levels.

Experts, consultants, and other temporary employees with appointments terminating prior to June 30, 1975, will not count against individual office ceilings providing sufficient funding is included in your budget.

The ceilings for the regions include specific levels for certain programs. Regional Administrators are authorized to determine position requirements for all other programs within their total ceiling.

Frank G. Zarb
Administrator

Attachment

Federal Energy Administration
Regional Personnel Ceilings

June 30, 1975

Compliance and Enforcement	784
Allocation Operations	205
Exceptions and Appeals	30
Legal Counsel	71
Conservation and Environment	68
Resource Development	40
All other programs	292
Total	1490

REGION	COMPLIANCE	OPERATIONS	LEGAL	EXCEPS.	CONS.	RES. DEV.	SUBTOTAL	ALL OTHERS	TOTAL
BOSTON	35	9	5	3	5	4	61	24	85
NEW YORK	72	17	7	3	9	4	112	28	140
PHILADELPHIA	74	20	7	3	5	4	113	28	141
ATLANTA	[illegible]	37	7	3	5	4	136	32	168
CHICAGO	109	41	8	3	11	4	176	36	212
DALLAS	206	27	13	3	5	4	258	41	[illegible]
KANSAS CITY	79	16	7	3	2	4	111	28	139
DENVER	39	9	5	3	2	4	62	25	87
SAN FRANCISCO	70	21	7	3	5	4	110	28	138
SEATTLE	20	8	5	3	2	4	42	22	[illegible]
TOTALS	784	205	71	30	51*	40	1181	292	1473

* 17 Conservation positions to be distributed at a later date.

Federal Energy Administration
Employment Ceilings
June 30, 1975

Organization	Previous Staffing July 1974	On-Board Feb. 7, 1975	Ceiling June 1975
Administrator	22	21	26
Management & Administration	296	252	242
Policy & Analysis	310	354	366
Conservation & Environment	104	155	190
Energy Resource Development	136	202	210
Operations, Regulations & Complaince	284	293	325
International Energy Affairs	43	47	[illegible]
General Counsel	57	77	[illegible]
Communications & Public Affairs	127	127	[illegible]
Congressional Affairs	26	45	[illegible]
Intergovernmental, Regional & Special Programs	14	34	37
Research & Development	17	17	5
Private Grievances & Redress	39	48	55
Consolidated Account	48	42	23
Total Headquarters	1523	1714	1786
Field Offices	1920	1466	1490
GRAND TOTAL	3443	3180	3276

FEDERAL ENERGY ADMINISTRATION
Analysis of Appropriation Requests and Allowances, FY 1975
(dollars in thousands)

Item	Personnel Compensation and Benefits	Travel	Transportation of Things	Rent, Communications and Utilities	Printing and Reproduction	Other Services	Contracts	Supplies and Materials	Equipment	Total	Positions	Average PC&B Per Position
Federal Energy Office	$ 14,915	$ 535	$ 10	$ 1,257	$ 300	$ 1,131	$ --	$ 152	$ 700	$19,000	1,040	$ 14,[illegible]
No Change												
Petroleum Allocation	32,785	2,565	490	2,695	1,440	3,180	19,900	1,100	2,965	67,200	2,107	15,[illegible]
Congressional Action	--	--	--	--	--	--	- 500	--	--	- 500	--	
Public Law 93-	32,785	2,565	490	2,695	1,440	3,180	9,400	1,180	2,965	[illegible]	2,1[illegible]	
Oil and Gas	2,215	135	10	105	60	320	--	20	35	2,900	11[illegible]	1[illegible]
Congressional Action	--	--	--	--	--	- 10	--	--	--	- 10	--	
Public Law 93-	2,215	135	10	105	60	310	--	20	35	2,[illegible]	11[illegible]	
Office of Energy Conservation	1,010	106	5	82	35	63	21,550	29	20	22,[illegible]	42	24,[illegible]
Congressional Action	--	--	--	--	--	--	- 1,010	--	--	- 1,010	--	
Public Law 93-	1,010	106	5	82	35	63	20,540	29	20	21,[illegible]	[illegible]	
Energy Data and Analysis	1,960	100	25	200	100	90	2,430	45	50	5,000	90	21,[illegible]
Congressional Action	--	--	--	--	--	--	- 15	--	--	- 15	--	
Public Law 93-	1,960	100	25	200	100	90	2,415	45	50	4,985	[illegible]	
Total-Special Energy	52,885	3,441	540	4,339	1,935	4,784	43,880	1,426	3,770	117,000	3,[illegible]7	[illegible]
Congressional Action	--	--	--	--	--	- 10	- 1,525	--	--	- 1,535	--	
Public Law 93-	52,885	3,441	540	4,339	1,935	4,774	42,355	1,426	3,770	115,[illegible]	[illegible]	[illegible]
Department of Interior:												
Office of the Solicitor	1,080	66	2	62	4	34	--	42	10	1,300	[illegible]	[illegible]
Congressional Action	--	--	--	--	--	--	--	-15	--	- 15	--	--
Public Law 93-	1,080	66	2	62	4	34	--	27	10	1,285	[illegible]	[illegible]
[illegible] Project Appeals Board												
Public Law 93-	85	--	--	--	--	--	--	--	--	85	5	1[illegible]
Total - Federal Energy Administration	54,050	3,507	542	4,401	1,939	4,808	42,355	1,453	3,780	116,835	[illegible]	[illegible]

[illegible] 3/74

FEDERAL ENERGY OFFICE

FEA, CIE, RARP
2000 M Street, N.W., Rm 5002
Washington, D.C. 20461

E UNCLAS

4-15-75

X

Fred W. Stuckwisch 254-8377

MR. DELBERT FOWLER
FEA REGIONAL ADMINISTRATOR
ATTENTION: WAYNE GIFFORD
REGION VI
212 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201

WHY DO WE HAVE ONLY ONE (1) AUDITOR ASSIGNED TO EXXON?

FRED W. STUCKWISCH
DIRECTOR
REFINERY AUDIT AND REVIEW PROGRAM
COMPLIANCE AND ENFORCEMENT

APR [illegible]

Director, Enforcement Policy
and Program Review Staff

Regional Re-Deployment of Compliance and Enforcement Staff

Administrator
Federal Energy Administration

In those regions reducing staff, all will be at authorized levels or below by June 30, 1975. Some will be below e. g. Region III and IV because they are in the process of changing the mix of investigators and auditors, i. e., increasing the number of auditors while reducing the number of investigators.

Gaining regions have been unable to fully staff up because of the lack of funds for household moves. In addition, travel funds for the conduct of day-to-day business are short in all regions. As a result there has been a curtailment of investigation activity in some instances.

Region VI has now proposed they be allowed to stop hiring investigators/ auditors at 195 as opposed to their authorized ceiling of 206 for C&E. Funds allotted to pay the salaries of these 11 positions will be diverted (if approved) to defray travel and support costs of personnel already on board. In short, the persistent cause for failure to meet our commitments on re-deployment continues to be a lack of travel funds. This is a nationwide problem. Unless it is favorably resolved, re-deployment cannot be completed before the early part of next fiscal year.

Chris C. Garringer

(b)

FACSIMILE MESSAGE

		MESSAGE NUMBER	PAGES
TO: (LOCATION, NAME, OFFICE CODE) Fred Stuckwisch, Assoc. Asst. Admr. for Compliance, Office of Regulatory Programs	FROM (LOCATION, NAME, OFFICE CODE) D. M. Fowler, Regional Admr. Region VI, Dallas, TX	17-12	1
NAME, TITLE OF ORIGINATOR Wayne Gifford, Regional Dir. Compliance & Enforcement	NAME AND SIGNATURE OF AUTHORIZING OFFICIAL D. M. Fowler, Regional Admr.		DATE 4/29/75

MESSAGE

'75 APR 30 AM 11:02

SUBJECT: Assignment of Exxon Audit Team Members

Jim Murphy and Johnelle Weems comprised the Exxon RARP audit team from 7/1/74 to 2/7/75. On 2/7/75 Ralph Tippett was reassigned to Exxon (as Team Leader) from Continental, while Jim Murphy was reassigned to Tenneco. From 2/7 to present Tippitt has worked on Exxon with the exception of the period 4/21 to 4/25 when he attended a Gas Plants and Crude Producers School.

On 3/14/75 Ms. Johnelle Weems accepted the position of Reviewer-Conferee, Houston Group #2 (competitive announcement #R6-050).

The status of recently assigned Exxon RARP team members is as follows:

1. Richard Jones: E.O.D. 2/17/75; basic school 2/18 - 2/27; at Exxon 3/5 - 3/7; reassigned temporarily to Utilities 3/8 - 4/13; RARP school 4/14 - 4/23; 4/24 - 4/28/75 on Utilities Investigations. Returned to RARP team 4-28-75.

2. Bobby Joe Moon: E.O.D. 2/17/75; basic school 2/18 - 2/27; reassigned from Tenneco to Exxon RARP team approximately 3/3; reassigned temporarily to Utilities 3/10/ 3/10 - present utilities investigation (4/14-4/23 RARP school)

3. Serge Kauffmann: E.O.D. 3/3/75; 3/3 - 3/7 OJT; 3/8 - 3/22 Basic School; 3/23 - present temporarily assigned to utilities (4/23 - 5/2 RARP school).

Each of the auditors temporarily assigned to utilities investigations will be returned to the Exxon audit as soon as they have completed the segment of the audit presently in process. Expected dates of return to Exxon are: Bobby Joe Moon 5/17/75, and Serge Kauffmann on 5/6/75.

Washington Post
May 6, 1975
Page A-2

FEA to Double Oil Probers

By Thomas O'Toole
Washington Post Staff Writer

The Federal Energy Administration plans to double its staff of 110 investigating nationwide charges of oil price fraud during the six months of the Arab oil embargo that began in October of 1973.

"We're speeding it up steadily, but since all this goes back to the embargo I'm unhappy that every day the trail might be getting cold," FEA Administrator Frank G. Zarb said in an interview. "I want to complete this investigation as quickly and as thoroughly as I can . . ."

The only way to quicken and deepen the investigation, Zarb said, is to double the staff to 220. He said that if it takes more than a doubling then he wants to get that many more auditors, accountants and investigators on the FEA payroll to do it.

"I'm interested in one thing; I'm interested in people who profiteered during the embargo period," Zarb went on. "We're going to ferret out every one of those transactions and we're going to do it before the year is over.

The FEA has three price fraud investigations under way, but the one it has emphasized most is the one it has code-named Project Escalator. This involves allegations that oil suppliers may have overcharged electric companies and consumers by $250 million to $500 million.

More than 230 oil suppliers are under investigation, with the books closed on fewer than 30 of them. So far, fewer than 10 show apparent violations of FEA price regulations resulting in potential overcharges of more than $20 million.

The Escalator staff is the one whose number Zarb said he intends to increase. Doubling that staff presumably means doubling its budget, which now takes close to $3 million a year to finance field agents alone.

Zarb denied published reports of an open feud between the FEA and the Customs Service over jurisdiction in the price fraud case. Customs has its own staff of more than 40 investigating charges that Customs documents were falsified to boost the price of oil being imported into the United States. These are criminal charges, unlike the FEA violations, which are mostly civil complaints.

"It looks like historically there was a problem but there's no problem now," Zarb said. 'Our policy here is that whenever a willful violation is detected by our people, we immediately hand it over to the Justice Department. Wherever there are criminal violations, I want them prosecuted to the fullest."

TELEGRAPHIC MESSAGE

NAME OF AGENCY FEDERAL ENERGY ADMINISTRATION	PRECEDENCE ACTION: ROUTINE INFO:	SECURITY CLASSIFICATION -
ACCOUNTING CLASSIFICATION	DATE PREPARED 5/8/75	TYPE OF MESSAGE ☐ SINGLE ☐ BOOK ☐ MULTIPLE-ADDRESS
FOR INFORMATION CALL		
NAME GORMAN C. SMITH	PHONE NUMBER 254-8505	

THIS SPACE FOR USE OF COMMUNICATION UNIT

MESSAGE TO BE TRANSMITTED *(Use double spacing and all capital letters)*

TO: ALL REGIONAL ADMINISTRATORS

YESTERDAY, MR. ZARB ANNOUNCED AT A PRESS CONFERENCE THAT HE HAD DIRECTED ME TO TRIPLE THE LEVEL OF EFFORT ON THE UTILITY SUPPLIER INVESTIGATIONS. CONSEQUENTLY, THERE WILL BE NO DETAILING OF PERSONNEL FROM EITHER COMPLIANCE OR OPERATIONS (EXCEPT FROM OPERATIONS TO COMPLIANCE) TO ANY OTHER FUNCTION UNTIL ALL UTILITY SUPPLIER INVESTIGATIONS, INCLUDING COLLATERAL INVESTIGATIONS FOR OTHER REGIONS, ARE COMPLETED. IN ADDITION, THERE IS TO BE NO DIVERSION OF RARP PERSONNEL TO THIS EFFORT WITHOUT THE EXPRESS APPROVAL OF FRED STUCKWISCH. IMPLEMENTATION DETAILS WILL BE FURNISHED TO YOU AS THEY BECOME FINALIZED.

Gorman Smith

GORMAN C. SMITH
ASSISTANT ADMINISTRATOR
REGULATORY PROGRAMS

SECURITY CLASSIFICATION	PAGE NO	NO OF PGS
	1	1

STANDARD FORM 14
REVISED AUGUST 1967
GSA FPMR (41 CFR) 101-35.306

☆ U.S. GOVERNMENT PRINTING OFFICE: 1971-FSS 7480-B/446-801

COMPLIANCE REGIONAL STAFFING

AS OF MAY 29, 1975

	I	II	III	IV	V	VI	VII	VIII	IX	X	[illegible]
[illegible] AS OF [illegible] 30, 197[illegible]	65	117	96	101	10[illegible]	97	47	31	[illegible]	[illegible]	[illegible]
[illegible]	35	72	74	80	109	206	79	3[illegible]	[illegible]	[illegible]	[illegible]
C+E [illegible]	[illegible]4	79	71	75	100	192	77	33	[illegible]	[illegible]	[illegible]
[illegible]	10	27	18	25	39	122	28	16	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]3	40	36	12	45	41	28	8	13	[illegible]	[illegible]
[illegible]	3	2	6	0	8	8	10	4	[illegible]	[illegible]	[illegible]
CLERICALS	3	10	11	8	8	21	11	5	[illegible]	3	[illegible]
[illegible] 1, [illegible]74	0	4	7	9	8	32	4	8	[illegible]	[illegible]	[illegible]
[illegible]	0	11	15	15	23	31	9	8	[illegible]	[illegible]	[illegible]
[illegible] PERSONNEL NOW [illegible]	1	10	11	7	18	82	7	8	17	1	162

[illegible]:

Prepared by
Approved by

SUMMARY OF RARP STAFFING
TOP 30 REFINERS
2/16/75 - 5/25/75

REGION		CAPACITY BARRELS OF CRUDE PER DAY	2/16/75	3/2/75	3/16/75	3/30/75	4/13/75	4/27/75	5/11/75	5/25/75	5/11/75 PERCENT OF TOTAL STAFF	PERCENT OF TOTAL CAPACITY
II	HESS	538,500	3			3	3	3	3		3.191	4.012
	MOBIL	932,600	3			3	3	4	4		4.256	6.948
	COMMONWEALTH	161,000	2			2	2	3	3		3.191	1.199
		1,632,100	8			8	8	10	10		10.638%	12.159%
III	GULF	898,300	4			3	3	3	3		3.191	6.692
	SUN	564,000	3			3	3	3	2		2.128	4.202
	CROWN	100,000	2			2	3	3	3		3.192	.744
		1,562,300	9			8	9	9	8		8.511%	11.638%
IV	ASHLAND	358,200	2			2	2	2	2		2.128	2.668
	CHARTER	82,900	4			4	3	3	2		2.127	.618
		441,100	6			6	5	5	4		4.255%	3.286%
V	MARATHON	314,000	2			1	2	2	2		2.128	2.339
	STD INDIANA	1,065,000	5			5	5	5	5		5.318	7.934
	STD OHIO	285,000	2			2	2	2	2		2.128	2.123
	CLARK	104,000	1			1	1	1	2		2.128	.775
		1,768,000	10			9	10	10	11		11.702%	13.171%
VI	SKELLY	73,700	1			1	1	3	3		3.191	.549
	PETROFINA	200,000	2			2	4	3	3		3.191	1.490
	CITGO	268,000	2			2	6	4	4		4.256	1.997
	CONTINENTAL	349,200	1			1	1	2	4		4.256	2.601
	EXXON	1,252,000	2			1	1	2	4		4.256	9.327
	PHILLIPS	383,700	3			2	2	5	4		4.256	2.858
	SHELL	1,226,250	2			2	2	4	3		3.191	9.135
	TEXACO	1,083,000	3			2	2	4	3		3.191	8.068
	CHAMPLIN	140,500	2			2	2	2	3		3.191	1.047
	COASTAL STATES	160,823	1			1	2	2	3		3.191	1.198
	KERR MCGEE	147,250	1			1	1	1	4		4.256	1.097
	MURPHY	129,500	2			2	2	3	3		3.191	.965
	TENNECO	98,200	2			2	2	3	3		3.192	.732
		5,512,173	24			21	28	38	44		46.809%	41.064%
VII	KOCH	106,920	3			3	4	3	3		3.191%	.797%
IX	ARCO	789,800	4			3	4	3	3		3.191	5.884
	SOCAL	984,000	4			4	4	3	4		4.256	7.330
	MELLON	487,000	3			3	3	3	3		3.191	3.628
	GETTY	140,000	3			4	3	3	4		4.256	1.043
		2,400,800	14			14	14	12	14		14.894%	17.885%
		13,423,393	74			69	78	87	94		100%	100%

Federal Energy Administration
Distribution of Compliance Personnel
As of 5/14/75

	I	II	III	IV	V	VI	VII	VIII	IX	X	Totals
PROFESSIONALS - Operating											
RARP											
Majors		9	8	4	11	44	3		14		93
Others	1		2	3	7	39	4	8	1	1	66
PRODUCER	0	6	4	5	13	20	13	9	4	1	75
PROPANE	2	3	1	0	16	13	18	2	2	2	59
UTILITIES	10	21	27	3	7	25	4	5	6	3	111
RETAILERS/WHOLESALERS	9	16	10	40	29	16	9	0	12	6	147
OTHER											
MGRS/SUPVS	5	9	5	9	7	9	5	3	5	2	59
OTHER PROF	1	5	4	2	4	6	10	1	2	2	37
CLERICAL	3	11	11	8	9	21	12	5	6	3	89
TOTALS	31	80	72	74	103	193	78	33	52	20	736

6/11/75

FEDERAL ENERGY ADMINISTRATION

[illegible]

May 30, 1975

MEMORANDUM FOR: All Administrative Officers and Regional Directors

FROM : Director of Personnel

SUBJECT : Manpower Staffing Reports

I am forwarding for your use the most recent manpower staffing reports on FEA Headquarters and Regional Offices.

The total employment for Headquarters Offices decreased by 2 positions from the previous weekly total of 1731 for a current on-board strength of 17[illegible]. Total regional on-board strength decreased by 23 from the previous weekly total of 1[illegible]36 for a current on-board strength of 1413.

The net difference in total FEA on-board strength is a decrease of 25 positions from the previous 3167 to the current total of 3142.

MAY 30, 1975
FEDERAL ENERGY ADMINISTRATION STAFFING REPORT

ORGANIZATION	APPROVED EMPLOYMENT LEVELS	ON-BOARD COUNTED AGAINST CEILING	**ON BOARD NOT COUNTED AGAINST CEILING	*52s PENDING
A	26	27	1	+1
M&A	242	240	22	+2
P&A	366	371	35	+27
C&E	200	177	12	+28
ERD	210	198	14	+40
RP (Formerly OR&C)	325	297	13	+32
IEA	46	42	1	+2
GC	90	83	1	+7
C&PA	125	120	5	+5
PG&R	55	49	0	+7
CA	46	44	4	+1
IR&SP	37	36	2	+3
R&D	5	14	0	0
C ACCT.	23	31	0	-1
Total Headquarters	1796	1729	110	+154
Field Offices	1480	1413		
TOTAL	3276	3142		

*TOTAL NET FIGURES AFTER ACCESSIONS AND SEPARATIONS ARE RECONCILED. DOES NOT INCLUDE PENDING ACCESSIONS AND SEPARATIONS IN THE EXEMPT CATEGORY (THOSE NOT COUNTED AGAINST CEILING). ALSO DOES NOT INCLUDE PENDING 52'S WHICH NAME REQUEST AN EMPLOYEE ALREADY COUNTED AGAINST CEILING.

**DETAILEES, EMPLOYEES WITH AN APPT NTE DATE PRIOR TO 6/30/75, STAY-IN-SCHOOL PROGRAM EMPLOYEES, AND SUMMER AIDS.

[illegible] S[illegible]ING REP[illegible]
[illegible] 30, 1975

REGIONS		AUTHORIZED EMPLOYMENT LEVEL	ON-BOARD STRENGTH	**NON-COMPL [illegible] AGAINST CEILING	52- [illegible]
I	BOSTON	85	87	0	+3
II	NEW YORK	140	137	0	+1
III	PHILADELPHIA	141	140	3	+12
IV	ATLANTA	168	153	0	+1
V	CHICAGO	212	200	6	0
VI	DALLAS	299	263*	1	0
VII	KANSAS CITY	141	137	0	-1
VIII	DENVER	89	90	0	-2
IX	SAN FRANCISCO	138	136	2	-3
X	SEATTLE	67	70	3	-2
TOTAL		1480	1413	15	+9

HIRING AUTHORITY RESTS IN DALLAS. WHEREFORE CEILING CONTROL FIGURES ARE BASED ON DELAYED RECORD KEEPING. TELEPHONE CONTACT WITH DALLAS PERSONNEL OFFICE INDICATES 5/30/75 ON BOARD STRENGTH IS 267.

SUMMARY MANPOWER STAFFING CHART - FEA HEADQUARTERS
MAY 30, 1975

	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MAR.	APR.	MAY
A	22	23	26	22	24	24	22	21	21	22	27
M&A	247	296	265	268	262	266	254	240	235	236	240
P&A	310	344	345	357	366	376	351	361	366	362	371
C&E	104	141	130	133	155	143	146	164	180	168	177
ERD	136	183	227	214	224	223	201	196	193	192	198
RP (Formerly OR&C)	284	321	266	264	282	261	292	301	304	302	297
IEA	43	47	43	43	48	46	46	44	45	43	42
GC	57	63	63	67	72	71	75	77	78	80	83
C&PA	127	123	123	125	126	127	129	125	124	121	120
PG&R	39	40	39	40	49	41	48	46	45	45	49
CA	26	27	33	39	45	36	41	45	46	36	44
IR&SP	14	17	38	36	36	33	35	33	34	15	36
R&D	17	18	21	21	21	20	17	18	15	45	14
C ACCT.	48	52	49	47	47	47	44	39	38	35	31
TOTAL	1474	1695	1668	1676	1757	1714	1701	1710	1724	1702	1729

LINES OF AUTHORITY AND COMMUNICATION BETWEEN FEA NATIONAL OFFICE AND FEA REGIONAL OFFICES

9 OCT 1974

Director, Enforcement Policy and Coordination Division

Conference Procedures

All Regional Directors
Compliance and Enforcement

It has come to my attention that there exists some disparity among the Regions concerning conference procedures and policies. To date very little has been standardized in this area and it is conceivable that there currently exist ten seperate Regional variations, rather than a single uniform body of policy. If this is indeed the case, firms operating in more than one region may be subject to uneven enforcement efforts.

Please let me know if you see a need for multi-Regional meetings to exchange ideas and policies in this area. Your response by 15 Oct. is requested. Attention: Enforcement Policy and Coordination Division.

Chris C. Carringer

JBetz:wvm:10-9-74

cc: Subj/Chron/EPC/JBetz

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

AH

OFFICE OF THE ASSISTANT ADMINISTRATOR

December 12, 1974

MEMORANDUM FOR: Regional Administrators

SUBJECT: Policy Direction and Communication

It has come to our attention that some confusion exists concerning regional staff reporting relationships and appropriate communication channels between Washington and the field. These have, in some instances, led to duplication of efforts as well as to allegations that a number of regional personnel are failing to comply fully or in a timely manner with some directives and/or technical guidance provided by ORC.

The purpose of this memorandum is to eliminate confusion in order to promote effective program implementation and mutually beneficial working relationships between the regions and headquarters.

The Assistant Administrator for Operations, Regulations and Compliance is the FEA's national program director for all activities delegated to him by the Administrator. Therefore, any program directives issued by him to the Regional Administrators must be implemented promptly and fully.

Program directive material for ORC will be signed by the Assistant Administrator for ORC and will be issued to the Regional Administrator in whose name and under whose direction ORC-related units in the regions will implement the programs.

The headquarters Compliance and Enforcement and Operations Offices will provide directly to Regional Directors of Compliance and Enforcement and Operations, respectively, technical advice and guidance as to implementation of headquarters-directed programs; advice on and, where required, resolution of issues arising in the implementation of such programs; and additional detail required to assure effective and timely implementation.

General management of the Regional Office will be carried out by the Regional Administrator under the day-to-day coordination of OIRSP, which will assure that the interests of all FEA's programs are considered. OIRSP will surface to the Administrator any problems of dispute between programs which cannot be resolved through negotiation between impacted parties.

In order to attain smooth communication flow to the regions, major policy directives, announcements of meetings, and other-than-routine requests for data from the regions will be coordinated with OIRSP in advance of notification to the regions. This will in no way interfere with the expeditious, routine, day-to-day direct communication established between ORC and corresponding regional staff personnel; i.e., either informational material, telegrams, etc., sent to the regions or telephonic communications.

/S/
William W. Geimer, Director
Intergovernmental, Regional
and Special Programs

Gorman C. Smith
Acting Assistant Administrator
Operations, Regulations and
Compliance

FEDERAL ENERGY ADMINISTRATION

Date: FEB 2 0 1975

Reply to Attn of: Bill Geimer

Subject: Control of Regional Compliance and Enforcement Program

To: Frank Zarb

We do not concur in Gorman Smith's recommendation of Option III as contained in the latest version of his issue paper on the control of the Regional Compliance Program.

We are somewhat puzzled by this turn-about in Gorman Smith's position on control of the Regional C&E program. For some time we have had an agreement with him on this subject. Under the agreement, OR&C was responsible for providing C&E policy guidance and technical assistance to the regions. The Regional Offices were responsible for implementation. When OR&C felt that a region might not be adequately implementing a policy directive, or might fail to meet a policy objective, it would so inform IRSP, which would see to it that the problem was corrected. We know of no reason why this arrangement is unworkable, nor why OR&C has abruptly reversed its position.

In our comments on OR&C's original issue paper, we supported a position somewhere between Options I and IV, which were very similar. (Attachment A contains the original paper and our comments.) In the second version, however, Option III (previously Option IV) had been radically altered; therefore, we have no choice but to favor Option I.

The Regional Administrators are also adamant in their position and, as a result of our latest survey, are now unanimous in their support of Option I. Although we have incorporated many of their criticisms and suggestions into this paper, we believe that their individual comments should be read and weighed carefully before a final decision is made. (Attachment B.)

Our position on the control of the Regional Compliance Program remains unchanged. We are committed to the principle that the Regional Administrator should retain operational responsibility for the compliance program in the region while the National C&E Office would continue to establish policy, develop programs and provide technical guidance. Under this procedure, the regions must be responsible to the policy guidelines issued by the National C&E Office.

OR&C's recommendation, Option III, would strip the Regional Administrators of any control of the compliance program and make the RA "directly responsible to the Assistant Administrator for OR&C on all matters involving compliance and enforcement." Carried through to its logical conclusion, this concept would have each RA with little control over anything, and reporting to as many bosses as there are headquarters programs.

This certainly is not in keeping with the management concepts contained in the McKinsey Report. Its basic philosophy is evident in the discussion of the Regional Counsel, where it is recommended that "...although Regional Counsel should receive technical guidance from the Office of the General Counsel and should provide advice and counsel objectively and independently to the RA, in our judgment they should report directly to the RA and be accountable to him."

Gorman Smith's recommendation contained in Option III contradicts this sound management principle; and, therefore, we fail to see how OR&C can cite the McKinsey report as a supporting document for its position.

In addition, we object to the inclusion of a discussion of the delegation of authority to Regional Counsels within an issue paper on the control of Regional Compliance and Enforcement Program. If General Counsel believes this problem needs to be resolved through the issue paper process, then it warrants a separate issue paper.

Further, some of the problems mentioned in the issue paper as reasons for altering the present structural relationship between Headquarters and the field in order to conform to Option III are not by any means a result of the present structural arrangement. Rather, these problems can and should be resolved under the present system.

For example, the most common problem National C&E cites for centralizing the program is the lack of uniformity among the regions. However, the real cause for that lack of uniformity is the failure of Headquarters to provide adequate policy guidance to the regions and to respond to policy questions raised by them. Using a Bi-Weekly Narrative Report established by the National C&E Office, the regions have been submitting questions to Headquarters. One region has had 38 policy questions pending

in the National Office for five months. (Attachment C.) Similar delays have been encountered by the other regions. We cannot hold Regional Offices accountable for uniformity when Headquarters is so unresponsive to their problems.

Also, if C&E is having trouble with specific regions as this paper infers, they should notify the respective RAs immediately and not insert innuendos in their issue papers. If no resolution can be reached through their own efforts, then OIRSP will assure that those regions are brought into alignment with Agency policy.

In conclusion, we believe that adoption of Option I, with some modification as indicated in our response to OR&C's original Option Paper, represents a position which is most consistent with good management, FEA's interests, the McKinsey Report and the views of our most experienced operational personnel--the Regional Administrators. To further support our belief that this position is the one best suited to FEA's needs, we suggest that a representative group of RAs be called in for a full discussion of the operational implication of each option. We would urge that Joe LaSala, Jim Newman and Jack Robertson be selected.

Attachment

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

ISSUE PAPER

ISSUE:

To what extent, if any, should the regional compliance program be brought under the direct control and supervision of Operations, Regulations and Compliance?

BACKGROUND:

Description of the Present Structure of the National and Regional Compliance Program

Partly as a carryover from the pre-July 1, 1974 period, when Compliance and Enforcement ("C&E") responsibility was largely in the hands of IRS, and partly because substantial C&E effort was concentrated at the wholesale and retail levels, substantial enforcement responsibility resided at the regional level. The national C&E office provided the regional C&E directors with some policy guidance with respect to wholesaler and retailer compliance programs, but such guidance was of a general nature and was often received only by way of suggestion. Similarly, regional counsel have largely operated independently of the General Counsel's Office, usually seeking guidance and advice when particularly difficult questions arose. OGC sometimes overruled regional counsel with regard to particular compliance actions, but only if the matter might fortuitously come to OGC's attention and often on the basis that OGC would refuse to defend in court any compliance action in which it did not occur.

Two types of compliance programs have, however, historically been operated directly from the national C&E office. One is the refinery audit program, formerly called RARP, now CARD. The RARP auditors in the field and operating in refineries have been attached to regional offices for administrative purposes but until recently have reported directly to the national office. In recent months, however, a stronger regional role has been established. While compliance actions are still being reviewed at the national office of both C&E and OGC before final action is taken, regional counsel and regional C&E directors review these actions initially and the regional administrators sign Notices of Probable Violation ("NOPV's") and Remedial Orders ("RO's") issued to major oil companies for violations of the refiners' pricing rules.

The other kind of compliance activity historically operated from the national office has been a miscellaneous category of cases involving violations of the crude oil allocation program, certain pricing violations and various other kinds of "national" compliance activities determined on an *ad hoc* basis, such as violations of the injection orders issued in the winter and spring of 1974 to reallocate gasoline supplies among the states. The national office has also been instrumental in establishing a producer audit program, a propane pricing compliance program and a program to investigate pricing violations in the sales of fuel oil to public utilities. Although coordinated by the national office these compliance programs are handled by C&E personnel in the field, responsible to the regional administrators.

At the present time, there is no direct line of authority between the Assistant Administrator for OR&C and the regional offices of C&E. Instead, regional C&E directors and regional counsel are directly responsible to the regional administrators, who in turn are directly responsible only to the Administrator.

Problem Description

During its short life the regional compliance program has undergone substantial stress. A management system clarifying the relationships between regional and national offices is still evolving. Pressure to improve and expand the effectiveness of the enforcement program is often hampered by pressure to reduce its size and cost. Under current

organizational assumptions, enforcement policy is the responsibility of the national C&E office, but its implementation in the field is controlled at the regional office level. Regional offices respond differently to national office guidance, resulting in non-uniformity in the field compliance program.

A major problem is the lack of common understanding of the interrelationship between the national and regional offices of C&E. Most regional administrators consider themselves answerable only to the Administrator, and their willingness to accept directives from the national C&E office depends upon their own notions of how the compliance program should be operated. Regional directors of C&E and regional counsel are often confused as to when they should be following national directives and how to serve what are sometimes two conflicting masters. The agency has not spelled out this relationship through the issuance of delegations of authority. Regional personnel have often stated that the substance of delegations of authority is perhaps less important than just having clear delegations from which they can operate.

Another major problem in the present regionalized compliance program is that there is a serious lack of uniformity in applying FEA regulations. The FEA regulations are unusally complex and, therefore, readily susceptible of erroneous or dual interpretations. There is at the moment an insufficient understanding of some of the regulations at the regional level, and it is not uncommon for the same regulations to be interpreted and applied differently among the ten regions. This problem is particularly serious in view of the fact that a large segment of the industry is composed of national firms that are being treated differently in different regions of the United States and in relation to their competitors.

<u>OPTIONS:</u>

<u>Option I.</u> <u>Maintain operational responsibility for compliance in regions -- national office role limited to broad policy and technical guidance.</u>

<u>Pros</u>

. Would necessitate little change in the current regional structure.

- Would permit full flexibility on part of the RA's to utilize staffs as they see fit.
- Would provide RA's with authority to tailor priorities to regional needs.
- Would permit retaining national office compliance staff at current or lower levels.

Cons

- Would perpetuate and perhaps exacerbate present disparities in compliance programs.
- Would not give responsible national office program manager significant control over program execution.
- RA could utilize staff for regional programs other than C&E that may not have the same degree of national priority.
- May significantly inhibit achievement of major national objectives and priorities.
- Would hamper agency's ability to change enforcement direction swiftly.

Option II. Place all enforcement under direct national control, with regional offices responsible for administrative support only.

Pros

- Would assure full control of program priorities and objectives by responsible national office manager.
- Would provide for uniform application of policy, procedures and regulations.
- Would give responsible national office manager control over utilization and distribution of field staff within each region.
- Reduces "layering" -- national office program manager would not be required to go through OIRSP and RA in order to communicate with regional C&E directors.

- National office could deal directly with management office in budget and manpower planning to support and accomplish national compliance program objectives.
- Would allow RA's and regional support staff to refocus on administrative and other program problems which now require immediate attention in all regions.
- Would be similar to regional organizations adopted by other Federal investigative/enforcement agencies.

Cons

- Would necessitate substantial increase in, and redesigning of, national office staff.
- Would be necessary to have regional managers who are used to operating independently of the national office and whose complete cooperation could not be assured.
- Would significantly reduce RA's authority, which would meet with substantial resistence.
- Would have effect of placing a substantial portion (in some cases a vast majority) of the total regional staff outside regional office jurisdiction.
- Regional office might tend to disregard support needs of a program managed from Washington.
- Management of such a large and diverse function from headquarters might prove extremely difficult unless expensive sophisticated management techniques and communication systems were developed.
- Concentration of most significant decision-making in Washington might tend to undermine morale and effort of personnel in the regions.

Option III. Maintain operational responsibility in the regions, as in Option I above, and issue clear delegations of authority which make RA's directly responsible to the Assistant Administrator for OR&C on all matters involving compliance and enforcement (including workload priorities and staffing for particular projects). Corresponding delegations would apply to the General Counsel and regional counsel.

Pros

- Would require minimal structural or staffing level changes from current program.
- Would retain sufficient authority in the regions to avoid morale consequences of a major structural change.
- Would be consistent with the operation of other FEA "national programs."
- Specific guidance, formulated carefully and communicated clearly, would result in uniform applications of national enforcement program, at least at levels where consistency is most important.
- Would make one office (OR&C) ultimately responsible and reportable to the Administrator for all matters involving compliance and enforcement.
- Would provide sufficient flexibility to change priorities and programs as required.
- Would provide staffing leeway to handle regional priorities.

Cons

- Program managers in the national office might, as a practical matter, find it difficult to control personnel in the regional offices with whom they have little direct contact.
- Would necessitate development of national evaluation function of regional performance -- which might cause conflict.
- Might affect adversely the morale of RA's.

RECOMMENDATION: Adopt Option III

1. Keep basic current regional structure, including RA's responsibility for compliance in their respective regions.
2. Issue written delegations of authority as follows:
   a. Administrator delegates all C&E responsibility to Assistant Administrator for OR&C.

b. Assistant Administrator, OR&C, redelegates authority to Regional Administrators, who will be responsible to AA, OR&C, for conduct of all C&E functions under the following guidelines with respect to degree of national office supervision:

(1) For certain complex C&E activities that embrace two or more regions or where uniformity is essential (e.g., audits of producers, refiners, NGL processors and importer-resellers), the Associate Assistant Administrator for C&E will maintain close and continuous liaison with, and provide detailed technical guidance to, regional personnel assigned to such programs and shall, with the concurrence of the General Counsel, approve all NOPV's, RO's, Consent Orders, and Compliance Agreements before they are issued.

(2) The Regional Administrator shall be fully responsible for the technical supervision and guidance of all C&E activities other than those designated by the Assistant Administrator, OR&C, as requiring technical coordination by the national office.

c. Administrator delegates authority to approve or disapprove all C&E actions on the ground of legal sufficiency to the General Counsel.

d. General Counsel would initially redelegate authority as follows:

(1) Regional counsel would be delegated authority to provide general legal advice and assistance to regional C&E personnel on all C&E matters.

(2) Regional counsel would have delegated authority to give required concurrence of the General Counsel on all NOPV's, RO's, Consent Orders and Agreements in compliance cases where regions have been delegated principal compliance responsibility.

(3) General Counsel would retain concurrence authority in cases where national C&E office has retained a substantial degree of direct review and control.

3. Regions would have responsibility to implement all nationally-directed compliance policies and priorities.

4. Regions would be consulted with respect to compliance goals and objectives, but must meet those adopted by national office.

5. Region could bring resource conflicts between national programs to Geimer for his consideration and discussion with the C&E national program manager. Geimer could not overrule program manager, but could take matter to Deputy Administrator for resolution.

This recommended procedure is generally consistent with the basic design suggested by McKinsey and Company, Inc.'s, "Concept of Regional Operations", which is being submitted to the Administrator. An effective national enforcement program can be managed through this regional structure, as long as all regions are required to follow national program policy, and to the extent that such requirements of adherence is communicated by the Administrator clearly and forcefully.

The recommended organization structure does not require budgetary changes.

COORDINATION:

Office	Option	Tab
General Counsel		
Management and Administration		
Intergovernmental, Regional and Special Programs		
FEA Regions		

ADMINISTRATOR'S DECISION

______________approve ___________disapprove

______________comments

______________date

MEMORANDUM

TO : Frank Zarb [illegible] 1975

FROM : Bill Geimer

SUBJECT: Compliance & Enforcement Issue Paper

I do not believe any of the Options in this paper or in prior drafts have identified the real cause of the problem with the present method of operation. I do not believe that the problems are the fault of the Regional Offices or of the present FEA structure as this paper implies. Rather, many of these problems are the result of lack of communications and adequate policy guidance by Headquarters which can be resolved under the present organizational structure.

Our position on the control of the Regional Compliance Program has remained unchanged throughout the numerous editions of this paper. We are committed to the principle that the Regional Administrator should retain operational responsibility for the compliance program in the regions while Headquarters would continue to establish policy, develop programs and provide technical guidance. The regions must be responsive to the policy guidelines issued by National C&E Office.

In our comments on the first edition this position fell somewhere between Options I and IV which were very similar. In the second version, however, we found we had no choice but to support Option I since Option III (previously Option IV) had been so radically altered. In the final version of the paper, we continue to recommend Option I with some modification. Although the words of Option III have changed, the substance remains the same. RAs were unanimous in their support of Option I.

We urge you to adopt either Option I as presented in the paper or our original recommendation of a position between Options I and IV in the first edition. Both these Options are consistent with good management, the [illegible] report and the views of our most experienced operational personnel - the RAs. If, however, you decide not to accept either of these options, we believe you should defer your decision until you have had a chance to discuss the implications of each of the options [illegible] with the RAs since the [illegible] Options in this paper [illegible] major structural changes.

It is my understanding that you want the Deputy Administrator for Operations to have authority over both Headquarters and Regional Offices. [illegible] Options I or III would [illegible] removal of the Deputy from operational control and direction of over half of the Regional personnel ([illegible] C&E and [illegible] Regional

counsel). Before implementing such a long-term structural change, you may wish to consult the Deputy as well as the Regional Administrators.

COMPLIANCE & ENFORCEMENT MEETING
ATLANTA, GEORGIA

May 13, 14 & 15

1) Statement of Problem
2) Options
3) Recommendations
by noon Wednesday

PROBLEMS

1) What is going on (complete & in process)

a. Region
b. Headquarters

2) Priority System

a. Compliance & Enforcement and other divisions (include Regional Administrator)
b. Specific numbers or total M/N

3) Regulation Applicability & Interpretations (delay in obtaining)

a. Compliance & Enforcement
b. Counsel (Region & National)
c. Coordination between divisions

4) National Office- Compliance & Enforcement vs. Regional Administrator
Control of Compliance & Enforcement

5) Inconsistent National Office Guidance on National Office Projects — Within

6) Headquarters interference in field operations with or without notifying other Headquarters Divisions or Region

a. Why no concurrence on NOPV's, RO's, etc.?

7) Compliance & Enforcement Field Organization? (Compliance & Enforcement & Operations)

8) Inconsistent Reporting Requirements
(a) Information Required
a. Frequency
b. Methods
c. Timing (include lead time)

9) Budget-Functional, Separate Compliance & Enforcement Budget

   a. Travel Funds
   b. Allocation Authority

10) Regional Files

   a. What should be included?
   b. When
   c. Copies to National Office

11) Collateral Investigations

   a. Timing
   b. Scope

12) Utilities

   a. How to do better
   b. Manpower requirements
   c. Strategy
   d. Governor's letter from Zarb
   e. Guides on cooperation with other agencies ie, customs, etc.

13) Inter Regional information exchange

14) Compliance & Enforcement/counsel relationships (clarify rules)

15) Penalties (Failure to Assess)

   a. Civil
   b. Criminal
   c. Compromise
   d. National Office Policy needed
   e. Pizzi case

16) Technical Consistency N.O.

STATEMENT OF PROBLEM

1) National Office does not know how we are using resources, what projects regions are working, and what we are accomplishing with our resources.

While we believe there is a similar problem regarding information flow from National to Region, we have not made this a part of our statement.

OPTIONS

1. Improved reporting system.
2. Continue responding to requests as received.

RECOMMENDATION

2. Improve monitoring effort and on-site visits by National Office.

2. PRIORITIES

a. Problem: There is no series of priorities established for the various programs executed by the Regional Offices. New programs are constantly put into motion without adjustment in the available manpower or level of effort to be directed at each program. These priorities are being set by many individuals at various levels of the organization without coordination with other segments of the National Office or discussion with Regional Officials as to the impact.

b. Options:

1. Allow Regional Offices to establish priorities and utilize manpower consistent with local needs.
2. National Office establish priorities, discuss impact with Regions, and agree Region by Region on application of manpower.
3. Region have freedom to pick from among National Office objectives.
4. Region establish program plan per National Office guidelines and National Office approve. Subject to adjustment.
5. National Office establish independently.

c. Recommend:

Option 4 - This would require National Office to establish specific guidelines and limits on formulating plan, require coordination of concerned program managers at National Office level. Necessitate

consideration of Regional peculiarities and limitations, and provide a means of monitoring progress. This would also obviate changes or revisions being made by other than direction from the level authorized to approve the original plan.

PROBLEM 3.

I. There has been delays experienced by the Regions with respect to obtaining legal interpretations from Regional and General Counsel:

a. There is an inconsistency in the procedure in obtaining interpretations among regions which causes delays.

1. Some regions obtain interpretations from their Regional Counsels while others communicate directly with the National Office and General Counsel (see flow chart below):

(1) Regional C&E → Regional Counsel → General Counsel

(2) Regional C&E → Regional Counsel → National Office C&E → General Counsel

(3) Regional C&E → National Office C&E → Asst. General Counsel for C&E → General Counsel

(4) Regional C&E → General Counsel

II. Many legal interpretations issued by the General Counsel and Regional Counsel have not been in writing and without specific interpretive guidance and directed only to one office.

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RECOMMENDATIONS

All requests for interpretations should be forwarded to Regional Counsel in writing with a copy to National C&E. The National C&E Office should:

1) Develop a system for dissemenation of requests and interpretation to the Regional Offices.

2) Develop a follow-up system with General Counsel wherein bi-weekly status reports should be forwarded to all Regional Offices.

3) Develop a system to disseminate all interpretations in a timely manner to the Regions in order that consistency of action is maintained.

National Office C&E vs. Regional Administrator Control of Compliance & Enforcement

1. Statement of Problem:

The problem is one of separating line and staff authorities. Regional C&E divisions should have only one boss, i.e., the Regional Administrator or the Associate Assistant Administrator. If that boss is the Regional Administrator as presently organized, Regional C&E divisions also need the staff guidance and policy decisions of National C&E. Assignments direct from National C&E Divisions to Regional C&E raise the question of whether these assignments and priorities have been coordinated with other divisions in the National Office and at the Asst. Administrator or Associate Assistant Administrator level. Also, the Regional Administrator may not have had an opportunity for input into the establishment of these policies or priorities and may therefore lack commitment to them.

The problem has been resolved in part during the past few months with the establishment of the channel of communication for substantive policy decisions to be between the Assistant Administrator, Office of Regulatory Programs and the Regional Administrator. However, there is still misunderstanding on the proper handling of Nationally controlled programs such as RARP, Utility Suppliers, propane, and crude oil producers which constitute a major segment of the workload.

2. Options:

a. Regional C&E Divisions report directly to Associate Assistant Administrator. Regional Administrator would provide administrative support. Regional Director C&E would be responsible for execution of the policies established by the Associate Assistant Administrator.

b. Regional C&E Divisions report directly to Regional Administrators with Nationally controlled programs delegated to the Regional Administrator. National Office would continue to establish program requirements and policies and would monitor regional accomplishments but would eliminate its individual case management and control activities. Case management and control activities as used in this context mean the giving of instructions or advise to auditors on cases during their investigation, giving informal interpretations in conversations with firms under investigation, and requiring concurrence on compliance agreements and NOPV's.

c. Continue present system which is a mixture of a & b.

3. Recommendation:

Recommend item "b" be adopted and that responsibilities be clearly set out in writing for all affected persons.

5. Inconsistent National Office Guidance on National Office Projects

   Instructions emanating from different divisions of Compliance and Enforcement at the National Office concerning various programs which are in conflict with each other. Request for information appear handled in the same manner. Too many duplicate requests. Each program from National Office appears to be given a higher priority than that which preceded it.

Options:

a. More and better policy statements

b. Adherence to generally accepted principles of program management and planning

c. Adoption of option 2(b) in item 4

Recommendation:

c. Adopting option 2(b) in item 4 plus all of above

6. PROBLEM

a. National Office interference in field operations without notifying appropriate Regional Officials. Lobbyists, attorneys and company officials have contacted high officials in FEA National Office, discussed cases and obtained decisions based on incomplete facts that have rendered useless hundreds of hours of investigation. Frequently, the field office learns of this from the company as the National Office officials has not informed us.

b. The multi-layered review and concurrence procedure on cases clear to National Office level is causing a "bottleneck" or delay in case flow which results in fewer cases reaching the end of the pipeline. This procedure is time consuming and results in less manpower for training programs, policy and procedural guideline formulation, and dissemunation of information. There is a point of diminishing return.

Options "B":

1. Allow Regions to review, approve and release all NOPV's and RO's.
2. Same as above with prior National Office guidance and information on precedents and policy to assure consistency.
3. Leave to Regional discretion which cases require National Office involvement.
4. Allow Regions to do all except 3 above. Automatic submission on new programs to be dropped when issue settled and competency developed.

5. National Office review of all NOPV's and RO's. Authority to be delegated to Region when appropriate.
6. Regional authority to issue all NOPV's and RO's with a N/O post review program.

RECOMMEND:

Options 2 and 6 combined. This would facilitate workflow. It would require National Office to devote strict attention to the development of the program, training, and guidance including dissemination of information on policy and precedent.

Options "A":

1. Continue the practice and destroy field credibility and effectiveness.
2. Whenever such officials request such meetings, immediately ascertain if a case is open. If policy or interpretations are brought up at such meetings, state that we will take the matter under advisement and will issue a formal ruling or interpretation only after receipt of a written application in accordance with the procedural Regulations. Consideration should be given to having a regional representative familiar with the case present. As a minimum, the facts developed by the FEA investigator should be ascertained prior to the meeting.

PROBLEM 7

1. Whether C&E and Operations should be combined into one operating division.

Options

1. Compliance & Enforcement should not be combined into one operating division with any other division and should preserve its identity reporting directly to the Regional Administrator.
2. Compliance & Enforcement should be combined with Operations to make one Regulatory Division as in the National Office.

RECOMMENDATIONS

Option #3

JUSTIFICATION

1. C&E must be able to preserve program visibility and effectiveness especially with respect to current publicity and congressional interest in the operations of the organization.
2. Because of the importance of the program the Directors of C&E should direct their full time efforts to accomplish the mission.
3. There is no direct benefit to C&E in combining it with Operations.
4. Keeping C&E as a single entity would prohibit the utilization of C&E personnel into other functions.

NOTE

Discussions centered around organization of the C&E Regional Office. It is recommended that a national task force be created to study the problem of proper regional C&E organization and staffing.

8. Inconsistent Reporting Requirements

I. Problem:

a. Current system basically a system carried over from Stablization which is not compatable to FEA needs.

b. Current reporting systems do not provide information needed by National Office to monitor National Office directed program and overall C&E accomplishments.

c. National Office and Regional Office not able to use current statistic gathering methods to secure information needed to answer questions from outside sources concerning FEA activities and accomplishments.

d. Many different methods used by various Regions for internal reporting purposes.

II. Options:

a. Continue present system and respond to requests for information on a crash basis

b. Make minor changes to time & ICA procedures for computer input

c. Overhaul the entire system.

Goal:

To establish a reporting system which will provide meaningful information on utilization of FEA resources and report accomplishments accurately.

Preferable not more often than monthly, with adequate lead time for accurate accumulation.

II. Recommendations:

Establish a task force of knowledgable National Office and Regional Office people to review current National Office and Regional Office methods, determine what is needed and make recommendations for an overall C&E reporting system.

Things to consider:

a. Inventory current reporting systems, especially on National Office Projects to eliminate overlagging, inconsistant and meaningless reporting requirements.

b. Analize current computer bank information and determine how this information and computer can be utilized.

c. Review other many requests from outside sources to determine common elements.

d. Questionaire to Regional Office C&E Directors for their suggestions and outline of thier current methods.

e. National Office central clearing of requests for information to determine actual need to refer to Region Office for input.

PROBLEM 9

1. At the present time the Regional Directors do not know how much travel funds are available to C&E because there is no separate C&E travel budget.

Options

1. Each Regional C&E Division should maintain and operate under a separate allocation travel budget granted by the National Office.
2. Maintain the present system wherein the Regional C&E budget is included as part of the overall Regional budget.
3. The Regional budget submission and approval will include a separate allocation for the C&E division.

Recommendation

Option # 3

Justification

1. The National Office determines staffing, works assignments, and manpower resources but have no control over travel expenses & budgetary allotment in order to carry out the responsibilities of the National Program.
2. It would preclude the diversion of funds from C&E operations to other functional areas.
3. It enables the Regional and National C&E Offices to realistically estimate their financial needs for the next budgetary fiscal period commensurate with the work and objectives to be accomplished.

PROBLEM /0

1. There has been an increasing number of requests from PIO because of the Freedom of Information Act, and the National Office with respect to certain information in the investigative files. Should there be a mandatory system wherein investigative files should be kept in the Regional Offices.

Options

1. Case files should be kept in the Regional Offices.
2. Case files should be kept in the Area Offices
3. The determination of where case files should be kept should be left to the discretion of the Regional Director of C&E based upon his experience and internal organizational set-up.

Recommendation

Option # 3

Justification

1. Leaves flexibility with Director of C&E to determine where case files are located based upon internal organizational set-up.
2. Analysis indicates this is not a case file problem but a reporting problem as to what data is needed in National Office.
3. National Office should review the current case control system and consider it as the source of informational needs.

11. COLLATERAL INVESTIGATIONS

a. Collateral investigations are not getting the same priority in the receiving regions as they held in the initiating region. Sometimes months go by with no action and no status reports.

Options:

1. Require that collaterals be assigned the same priority as the case held in the requesting region. Written status reports at thirty-day interval.
2. Assign all collaterals a specific priority as a group.
3. Establish a national collateral procedure and issue an implementing directive to be followed by all regions.
4. Require that all collaterals be completed within a specified time frame with any extensions to be approved in writing by the requesting office.

RECOMMEND:

Options 1 and 3 combined. The directive should place emphasis on not requesting unnecessary collaterals and should attach importance to expeditious completion.

12. UTILITIES -

A. This agency does not have available the numbers of qualified investigative personnel to audit the entire utility supplier universe in any reasonable time, if we continue to devote effort to the other priority programs such as crude producers, RARP, propane, and wholesalers. If we pull these people off crude and RARP, we will not fulfill our commitment to Congress to maintain certain levels on these programs. Hiring additional and training them will consume at least two months before they are effective. After taking management and clerical, there are no more than 550 investigators nationwide. If 330 are placed on Utilities, this would leave 220 of the less proficient to split among the other programs.

In those investigations we did conduct, some suppliers were audited solely for compliance with ceiling price Regulations. The business relationships with other suppliers in the chain or reasons for the entity being in the chain at all, were not considered in some cases

Options:

1. Assign all personnel and drop other programs.

2. Drop utilities entirely.

3. Reduce effort in other programs and reassign part of personnel to program.

4. Reduce utility effort to practical level consistent with available manpower.

5. Hire sufficient personnel to adequately cover both utilities and other programs.

6. Restudy problem, establish a reasonable level after considering all manpower commitments to other programs and other problems, and revise approach to cover entities in supply chain as well as price. Consideration should be given to return per audit hour in adjustments to program, and staffing adjustments should be a consideration.

RECOMMEND:

Option 6.

13. Inter Regional Information Exchange

Not discussed as a separate item. Answers lie in present practices and recommendations in item 8.

PROBLEM 14.

There is a trend by the Office of General and Regional Counsel to acquire line functional responsibilities over the operations of Compliance and Enforcement:

a. NOPV's in most Regions require prior concurrence of the Regional Counsel before issuance.

b. Penalty acceptance in most Regions require prior concurrence of the Regional Counsel.

c. Subpoenas issuance by C&E in most Regions require prior concurrence of the Regional Counsel.

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OPTIONS

I. Authority for the issuance of NOPV's, subpoenas, and the acceptance of penalties should be vested within Compliance and Enforcement with Regional Counsel's assistance and advise when requested.

II. Regional Counsel should have the authority to concur prior to the issuance of NOPV's, subpoenas, and the acceptance of penalties by Compliance and Enforcement.

III. Regional Counsel should have the sole authority to issue NOPV's, subpoenas, and accept penalties based on Compliance and Enforcement Reports.

RECOMMENDATION

I. Authority for the issuance of NOPV's, subpoenas, and the acceptance of penalties should be vested within Compliance and Enforcement with Regional Counsel's assistance and advice when requested.

JUSTIFICATION

1. Many Regions have experienced excessive delays in the issuance of NOPV's when reviewed by Regional Counsel. We do not believe that a review by Counsel of every NOPV is necessary especially in view of the fact that few NOPV's ultimately result in court litigation. If an NOPV is defective a reissuance is not detrimental to the case.
2. Compliance and Enforcement is better staffed and thus has the ability to handle the high volume of NOPV's in the Region. For example one region has a back log of seventy-five cases in its Regional Counsel's Office.
3. We believe that Regional Counsel has a vital role to fulfill in the overall mission; however, its authority should be limited to an advisory or staff functions.

15. PENALTIES -

Problem

Nationwide inconsistency in application of penalties to violations of allocation and pricing regulations. Inconsistency between programs is also exident.

Options:

1. Allow Regions to continue to act independently.
2. Headquarters establish policy and procedural guidelines and issue implementing directive within 30 days, to which all Regions and National Office should adhere.

Recommend:

Option #2. Failure to do this creates problems in dealing with GAO, congress, multi-regional oil companies and organizations, and the press.

16.. Technical Consistency

Problem:

Responses to requests for technical advise are not received within a reasonable time frame.

The responses, when finally obtained, are not distributed for general use nor converted to general rulings which would have universal applications.

All technical responses should be numbered and disseminated to all Regions.

A feedback should be received by the requesting Region on all answers not received within 15 days.

INVESTIGATION OF UTILITY SUPPLIERS

FEDERAL ENERGY ADMINISTRATION

Acting Assistant Administrator
Operations, Regulations and Compliance
Attn: National Case Manager
Utilities Investigation

FEB 14 1975

All Regional Administrators

During his recent visit to Atlanta the Utilities Investigation Program was again brought to Mr. Zarb's attention. He has directed me to bring to your attention that the program continues to have top priority. To date, out of 39 utilities under review, only 7 have been completed. Please give this Program your personal attention in order to assure more expeditious handling of these cases.

To save time, investigators should carry, in addition to their credentials, a copy of Sawhill's December 6 memo and of the FEAA of 1974 with Section (13 a-d) highlighted. This should serve to preclude delays precipitated by requests for FEA's authority to investigate.

This is a vital project and it is imperative that you bring to the attention of your staff the very highest priority that the Administrator wishes us to assign to the expeditious conclusion of these cases.

Gorman C. Smith

February 20, 1975

MEMORANDUM FOR ALL REGIONAL DIRECTORS
Compliance & Enforcement

FROM : John H. Carter
National Case Manager

Fred W. Stuckwisch
Director
Refinery Audit & Review Program
Compliance & Enforcement

SUBJECT: Utilities Investigation -
RARP Collateral Support

Because of problems associated with limited available manpower for utilities investigations, the complex and specialized nature of utility record-keeping systems and their demands on the auditor, and the tremendous number of product transactions often involving many suppliers, the utility investigator/auditor must make extremely efficient use of time.

Collateral support from RARP teams could be of considerable value in enabling the investigator/auditor to reduce the scope of the utility audit and to increase the likelihood of noting illegal supply prices by providing information such as:

1) May 15, 1973 selling prices for major oil companies supplying product directly, or indirectly, to utilities; and

2) Maximum lawful prices for given periods to applicable classes of customers.

When there is need for collateral support from a RARP team, please send the request to the appropriate Regional Director, Compliance and Enforcement, with a courtesy copy to Fred W. Stuckwisch, Director, Refinery Audit and Review Program, Office of Compliance and Enforcement, Room 5002-I, 2000 M Street, N.W., Washington, D. C. 20508. Telephone requests should be kept to a minimum and written confirmation must follow.

When information supplied by RARP is compared to actual charges and a violation appears to exist, the utility auditor/investigator should supply to the cognizant Regional Director for Compliance and Enforcement amounts, dates and other pertinent information concerning the actual charges. It will then be the responsibility of the cognizant Regional Director to take appropriate action in verifying and pursuing the violation. Results of any RARP action should be supplied to the Region conducting the utility investigation.

OR&C/C&E/RARP/FWStuckwisch:PWhite:mgt/2-19-75

FEDERAL ENERGY ADMINISTRATION

John A. Carter
National Case Manager

Utilities Investigation

All Regional Directors
Compliance and Enforcement

Since last fall, RARP audit teams at the thirty major refiners (list attached) have been directed to review and determine the correctness of class of customer and prices charged for number 5 and 6 residual fuel sold directly to utilities.

Audits have been completed at most of the major refineries. In-depth reviews were completed at <u>all</u> of the principal residual fuel oil suppliers such as

To date, RARP reviews have disclosed no violations at any of these companies in their direct sales to utilities.

Further information on these audits will be passed on to you when it becomes available.

Attachment

MAY

Director, Compliance Policy and Management
Office of Compliance

Response to Questions Raised in Weekly Utilities
Investigation Reports

All Regional Administrators
Attn: Regional Directors of Compliance

Attached are General Counsel's responses to questions that were received in connection with the Utilities Investigation. We are forwarding these responses for your guidance and reference in current and future Utilities Investigations.

Harold A. Butz, Jr.

Hal Butz

Attachment

KEllis:car:5/8/85

cc: Subj/Chron/EP&PR

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MAY 8 1975

M E M O R A N D U M

TO: John H. Carter

FROM: Carl A. Corrallo
Office of the General Counsel
Compliance Division

SUBJECT: Questions from Regions Regarding Utilities' Investigation

On May 6, 1975, you forwarded four (4) questions which you had received from the Regions concerning the utilities' investigation. In your routing slip, you requested my advice as to the appropriate responses to those questions. Those responses are as follows:

Question 1 indicated that Conoco had charged Philadelphia Electric Company a 37¢ per barrel charge to conclude a crude oil swap with ARCO. Philadelphia Electric, in turn, charged ARCO 75¢ per barrel on the same swap. This allowed Philadelphia Electric to realize a 38¢ per barrel profit which was reflected in their accounting as miscellaneous income. The Region asked whether FEA had the authority to order a reduction in the fuel surcharge to the consumer to reflect this additional profit.

FEA has no authority to reduce a fuel surcharge to a utility's consumers. FEA regulations allow examination of transactions involving petroleum and petroleum products and the determination of whether the prices charged in those transactions exceeded the maximum lawful selling price as determined by a proper application of those regulations. FEA regulations in no way permit this agency to direct utilities to refund amounts back to the consumer or to dispose of those amounts in any particular way. That jurisdiction is vested in the public utility commissions of the various states and, to a limited extent, in the Federal Power Commission. Should the results of our investigations disclose revenues that appear to be realized by the utility without appropriate pass-through to the consumer, FEA investigators should apprise the National Office of such

circumstances and, in turn, the National Office should contact local state regulatory agencies for whatever action those agencies deem appropriate.

Question 2 indicates that pricing investigations of an unidentified base period supplier show overcharges to its purchaser during the period of February 1974 through November 1974. However, it is believed that investigation of prices charged by this same supplier after November 1974 may reflect undercharges, i.e., sales at prices less than the maximum lawful selling price as determined by FEA regulations. The Region questions whether suppliers will be cited for violations for the prior periods. The answer is yes, they will. The fact that for reasons unrelated to FEA price rules a base period supplier determines that it will sell product at a price under its maximum lawful selling price in no way exculpates that supplier from culpability for its violation of the FEA price regulations during prior periods.

The third question indicates that a supplier of VEPCO did not sell to a utility on May 15, 1973. The Region asks how does one determine the base price under these circumstances. I am assuming for the purposes of responding to this question, that the product involved, be it residual fuel or #2 fuel oil, was sold by this supplier to some consuming purchaser on May 15, 1973 and that the only problem is the lack of sales by this particular supplier to a utility. Based on that assumption, the response to the question is that the investigator should determine the classes of customers of this supplier as of May 15, 1973. He should then establish which of those classes is most similar to VEPCO, in terms of transportion, in terms of quantities purchased, in terms of the end-use of the product involved, etc. The base price as computed for that most similar class of customers will be the legal selling price for that base period supplier to VEPCO.

The fourth and final question indicates that an investigation has disclosed an overcharge by a supplier to a utility of approximately $67,000 for the period February 1974 through May of 1974. It indicates that the supplier is no longer doing business with the utility and that, in addition, subsequent sales by this supplier to this utility were at a price under the maximum lawful selling price to the utility.

- 3 -

The question is can we issue an NOPV for overcharges and, if so, under what authority or regulations can we ignore the subsequent undercharges. As I indicated in my response to Question 2, we can issue an NOPV for overcharges, even though transactions subsequently occurred between these parties at a price under the maximum lawful selling price of the supplier involved. With respect to our authority to ignore the subsequent undercharges, I would point out that FEA regulations impose a ceiling price. We do not set a specific price at which transactions must occur. Therefore, to the extent that transactions occur at a price under the maximum lawful selling price, it is permissible under FEA regulations. We have no obligation to see that the supplier involved realizes his maximum lawful selling price for any given period of time.

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

JUN 10 1975

OFFICE OF THE ADMINISTRATOR

Honorable Sidney R. Yates
Chairman, House Subcommittee on
Appropriations, Committee on
Interior and Related Agencies
House of Representatives
Washington, D. C. 20510

Dear Mr. Chairman:

There is attached a requested amendment to the draft Continuing Resolution now pending in the House Appropriations Committee. Also attached is a "back-up" sheet showing the estimated cost of this proposed amendment.

This is in line with your statement at our FY 1976 Appropriations Hearing on May 7 wherein you said the Committee would be sympathetic to any reprogramming involving investigation of fuel suppliers to the electric utility industries. Of course, without an Appropriations Act, we are not able to reprogram to cover these extremely important investigations. In order to give these investigations the added emphasis they require until the Appropriations Act is passed, I respectfully request that this language be added to the Continuing Resolution for Fiscal Year 1976.

Your continued support of the Federal Energy Administration is genuinely appreciated.

Sincerely,

Frank G. Zarb
Administrator

Enclosures

Additional Language to be inserted in the Continuing Resolution, FY 1976

(In the appropriate section)

, augmented by an additional proportional amount necessary to support the pending investigation of fuel suppliers to electric utility industries.

Resources Required to Investigate Fuel Suppliers
to Electric Utility Industries

BREAKOUT OF MANPOWER REQUIREMENTS:

Total Required: 470 positions

- 250 FEA positions (40 in Hq; 210 in Regions)
- 220 positions of contracted effort

Skills Required:

- 200 FEA auditors (30 in Hq; 170 in Regions)
- 50 FEA support positions (10 in Hq; 40 in Regions)
- 220 contractural positions (150 auditors; 70 support positions)

Estimated Costs:

- $10 Million

6/10/75

56-499 O - 75 - 17

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

OFFICE OF THE ASSISTANT ADMINISTRATOR

June 13, 1975

MEMORANDUM FOR REGIONAL ADMINISTRATORS

FROM: Gorman C. Smith

This morning the General Accounting Office team briefed Mr. Zarb on their evaluation of our utilities project. One of their key points was that we are, in fact, devoting far less effort to the utilities investigation than I have led Mr. Zarb to believe. Specifically they told Mr. Zarb that for the week of 16 May your reports to National Headquarters indicated 111 people assigned to the utilities investigation, yet only 22 man weeks were, in fact, devoted to this effort.

Please submit to me, to arrive here not later than COB 17 June, a breakdown of how the people you reported as working on utilities for the week of 16 May actually used their time during that week. Also, attach an explanation of why they were doing other-than-utilities work. This detail is required to prepare Mr. Zarb for his testimony on 19 June. The GAO team is going to testify at those same hearings.

The GAO team also reported that in the absence of detailed guidance from the National Office on the criteria for selecting suppliers for audit, a number of regions are spending large amounts of effort auditing suppliers whose prices appear to be reasonable and who supply small volumes of product to utilities. Pending development of detailed guidance to be issued in the near future, please concentrate your audit efforts on those suppliers who sold significant volumes of product to utilities during the period November 1973 through June 1974 and whose prices appear to be higher than the normal range of prices paid by that utility and others during the same period. The intent here is to focus our available manpower on those suppliers most likely to be in violation and those that if found to be in violation would account for the largest amounts of overcharges.

A third major deficiency identified by the GAO team was the low priority accorded collateral investigations requested by other regions. Please review the collateral investigations you now have from other regions, identify and report the number that in your judgment do not conform to the draft guidance on standards for collateral investigations issued on May 1, 1975; the number that do not conform to that draft guidance that are still pending in your region, and your estimate of when these collateral investigations will be completed. Identify separately any collateral investigations in the second category that impose an additional workload on the refinery audit teams.

A fourth criticism by the GAO referred to the poor communication and cooperation among the regions and between the regions and the National Office. This troubles me greatly. I would appreciate your recommendations as to what measures we can take here at the National Office to improve these clearly unsatisfactory situations and any recommendations about procedures within regions that need to be changed. One comment the team made was that we had too many written memoranda and too few phone calls among the people actually doing the work.

As you are aware, we are requesting additional staff to support our utilities efforts. Our chances of justifying those requests successfully are imperiled by reports such as the one delivered to Mr. Zarb today, which concluded that we are not using the staff we have effectively. You will be receiving additional guidance on this and other aspects of the compliance program in the near future. I would appreciate by COB 20 June your own recommendations in this regard. Please do not waste your time or mine by recommending that we not pursue the utilities program vigorously to an early conclusion. Rather, I need your recommendations on how we can do it better than we now are.

B-17[illegible] JUL 15 [illegible]

The Honorable Frank Zarb
Administrator
Federal Energy Administration

Dear Mr. Zarb:

Pursuant to your request we surveyed the efforts of the Federal Energy Administration (FEA) to audit fuel oil suppliers of major utility companies (Project Utility). Our review was made at FEA headquarters and at its regional offices in Atlanta, Boston, Dallas, Kansas City, Philadelphia, and San Francisco. We discussed the program with headquarters officials, regional compliance and enforcement directors, and field auditors and reviewed available program documents.

On June 13, 1975, we briefed you and your staff members on the results of our review. This letter summarizes the matters discussed in that briefing.

Specifically we found that:

- --The effective manpower assigned to the project has been far less than the level reported to FEA headquarters.

- --Inconsistent auditing among FEA regions has resulted in substantial audit effort in areas unlikely to yield evidence of violations.

- --Investigations have been delayed because of complex supplier relationships, inadequate supplier records, and poor coordination among FEA regional offices.

- --Regulatory questions have impeded completion of a number of investigations.

While there has been considerable publicity regarding Project Utility, we found that the amount of violations detected has not justified the emphasis placed on the project. Also, the violations detected have not been unique to the utility area but apply to other fuel suppliers' customers as well.

USP-76-2

BACKGROUND

FEA's compliance and enforcement program is aimed at assuring industry compliance with petroleum price regulations established under the Emergency Petroleum Allocation Act of 1973 (87 Stat. 627) and the Federal Energy Administration Act of 1974 (88 Stat. 96). Under FEA's regulations, wholesalers may charge their May 15, 1973, prices, increased dollar for dollar for any additional product costs incurred after that date. Further, when the firms can substantiate increases in nonproduct costs, such as labor or overhead, they are allowed additional price increases.

Historically, FEA's compliance and enforcement program has been directed toward four basic levels of the petroleum industry--producers, refiners, wholesalers, and retailers. As of May 29, 1975, FEA had 727 employees assigned to the program.

FEA's Dallas and Atlanta regional office investigations of wholesalers in mid-1974 indicated that some utilities were being charged excessively high prices for fuel oil. In November 1974 FEA personnel from the Dallas and Atlanta regions and the national office met to discuss the results of the initial efforts. Following the meeting headquarters compliance and enforcement personnel recommended to the FEA Administrator that a special effort be started to detect overcharges to utilities. The Administrator agreed and on December 11, 1974, FEA issued a press release which stated, in part, the following:

> "Federal Energy Administrator John C. Sawhill today announced the immediate kick-off of 'Project Escalator.'[1] A special Federal task force of 30 investigators is being assembled from FEA's current field enforcement staff. They will investigate potentially widespread price-gouging involving sales of fuel oil to public utilities. If violations are widespread as early information indicates, the investigation could result in tens of millions of dollars in overcharges being returned to the consumer.
>
> * * * * *
>
> "* * *'Our ultimate aim is to get the dollars returned to the consumer in the form of price reductions on future purchases.'"

Also on December 11, 1974, in testimony before the Subcommittee on Reorganization, Research, and International Organizations, Senate Government Operations Committee, an FEA official stated that the project could result in as much as $100 million in overcharges being returned to consumers. Such statements and the widely publicized Jacksonville-Ven Fuel case created great interest in the project

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1 The program was subsequently renamed Project Utility.

On January 8, 1975, the national office provided regional compliance and enforcement staffs with an investigation guide for use in conduct of investigations. The guide stated that each region should select at least two utility companies on the basis of such criteria as market size, amount of fuel oil used, and complaints of large increases in customers' bills. At the utilities selected, the field investigators were to determine fuel oil prices paid by utilities and fuel oil suppliers' names and locations.

Many fuel-burning utilities[1] obtain supply from a number of fuel wholesalers who in turn obtain fuel from another set of wholesalers. Each set of wholesalers is referred to as a "tier," and there may be three or four wholesaler tiers for each utility. The system by which wholesalers operate between a refiner and a fuel user is generally called a "supply chain." Prices charged by a wholesaler are influenced by prices paid to other wholesalers located in the chain's lower tiers. Complications occur when wholesalers in the chain sell the fuel back and forth among themselves or when a wholesaler operates in more than one tier of the chain.

INVESTIGATIVE PROBLEMS

Manpower

While FEA regions reported--and FEA publicized--that about 110 auditors were assigned to Project Utility, we found that the manpower effectively assigned to the project was far less than the reported level. On the basis of the number of manhours reported by the regions, we computed that, on the average, 39 auditors were effectively assigned to Project Utility from January through mid-May 1975. For the week of May 16, 1975, about 22 auditors were effectively assigned to the project. Reasons for this low manpower level were that (1) some auditors were assigned only part time, (2) regional reporting was inaccurate due to various staffing changes, and (3) auditors returned to other compliance activities while awaiting assistance from other FEA regional auditors.

We also noted workload variations among the regions. For example, during the week of May 16, 1975, the San Francisco region had 1 auditor for every 3 supplier investigations while the Atlanta region had 1 auditor for every 11 supplier investigations.

Assigning auditors to Project Utility has also drained staff from other compliance and enforcement programs. Auditors have been reassigned from producer audits and some auditors of major refiners spend time assisting in investigations when a refinery is involved. In addition, some personnel hired recently to increase manpower at the refinery level have been assigned to Project Utility.

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[1] Utilities typically burn Number 2, 4, 5, and 6 fuel oil and, in some cases, jet fuel.

Inconsistent audit practices in FEA regions

Criteria for selecting suppliers for investigation were not incorporated into the January 8, 1975, program guide, and any verbal criteria provided by the national office were not uniformly adopted. This resulted in inconsistent practices among regions and in substantial audit effort in areas unlikely to yield evidence of violations.

Some regions were attempting to investigate all suppliers while other regions were selecting suppliers on the basis of such criteria as the amount of fuel supplied to the utility or the prices charged. In some investigations all of a suppliers' fuel sales to all types of customers were audited, while in others only sales to utilities were audited. When auditors detected violations, some regions immediately expanded the investigation to cover all of the suppliers' fuel sales, while other regions noted the questionable transactions for followup at some unspecified later date.

Such practices have led both FEA national and regional office officials to estimate that over 50 percent of the time spent on Project Utility has involved audits of reasonable priced fuel purchases.

Investigation delays

The complexity of supply chains has been a major problem for FEA auditors. To illustrate the complexity, FEA identified 13 wholesalers providing fuel oil directly to 1 utility. For 1 of those 13 direct suppliers, FEA identified 29 lower tier suppliers. This is a common occurrence. Auditing throughout this complex supply chain is extremely time consuming. A simplified supply chain is diagramed in the enclosure.

Brokers who charge a commission for finding fuel oil buyers and sellers may also operate anywhere within these supply chains. Brokers rarely take physical possession of the fuel but merely arrange transactions. In many cases, supplier records, particularly those of brokers, have been inadequate. For example, the only record kept by a Philadelphia broker was in his checkbook.

In other cases, a utility may be located in one FEA region while the utility's supplier is located in another region. In that event, the FEA region where the utility is located requests the other region's assistance. The January 8, 1975, program guide provides that another region's investigation requests should be completed within 15 days and returned to the requester.

We found that assistance requests among FEA regions were not being handled promptly. In the 6 regions visited, 90 assistance requests had been made but only 20 had been filled. Many of the unfilled requests had been made as early as January 1975, and FEA auditors did little followup to determine the status of their assistance requests. Since investigations could not be continued or completed until the assistance requests were

completed, many audits were suspended. When cases are suspended, auditors return to other projects or investigations.

Regulatory questions

Auditors assigned to Project Utility have encountered some regulatory questions which will have to be resolved before certain cases can be completed.

FEA auditors are not certain that brokers are properly covered by the regulations because their operations are not typical of wholesale operations. Many brokers began operations around the oil embargo period and did not have a May 15, 1973, base price similar to that of other wholesalers.

For these brokers and other wholesalers who began operations after May 1973, some FEA auditors have applied the "nearest comparable outlet" rule to determine the proper base period prices. This rule specifies that the base period price for such wholesalers is the same as that charged by the nearest comparable outlet on the day of the wholesaler's first sale. Regional officials and auditors said it was extremely difficult to find the nearest comparable outlet and that there may not even be such comparable outlets in the case of some brokers. Until the base period prices are established, the auditors have no basis on which to judge the reasonableness of the prices charged.

In addition a number of brokers and wholesalers operated outside the traditional supply chains and were not included in FEA's mandatory allocation program. FEA auditors are uncertain whether these brokers' margins or wholesalers' prices can be questioned if they failed to comply with the allocation regulations.

According to an FEA Office of General Counsel official, brokers are not considered wholesalers or resellers and are not subject to the nearest comparable outlet rule or FEA allocation regulations. The official stated further that a broker is considered an agent of the company which pays his commission and that the commission is considered a nonproduct labor cost. The official stated that the Office of General Counsel intends to prepare a memorandum for FEA auditors explaining the brokers' legal status under FEA regulations.

PROJECT RESULTS

As of May 16, 1975--the date of the latest FEA statistics available at the time of our review--FEA had targeted for investigation 336 suppliers of 48 utilities. Of the 60 investigations that had been completed, only 9 violations totaling about $1.7 million had been detected. Despite the project's focus on utilities, about $600,000, or over 30 percent of the violations, involved fuel users other than utilities, such as railroads or

municipalities. [illegible] officials told us that other [illegible] likely to be overcharged [illegible] violations [illegible] about $0.2 million. [illegible] violations in [illegible] regions [illegible] visit [illegible] the results of the project to date have not [illegible].

While the [illegible] to return dollars to the consumer, [illegible] not much [illegible] require the utilities to [illegible] regional [illegible] is suggested [illegible] public utility commission, or state regulatory [illegible] are made to insure that these [illegible] to [illegible].

CONCLUSIONS

We conclude that:

--Premature publicity has created pressure to complete Project Utility.

--Other fuel users are just as likely to be overcharged by fuel suppliers as are utilities.

--Since FEA has no authority over public utilities there is no assurance that refunds made to them will be returned to consumers.

--Poor communication and coordination were evidenced by the varying practices among the regions.

--Project Utility has hindered other compliance activities, such as the producer and refiner audits.

We believe that utilities, as well as other major fuel oil purchasers, can be used to identify suppliers charging questionable prices for their products. Once such suppliers have been identified, we believe that their transactions with other customers should also be investigated.

RECOMMENDATIONS

We recommend that FEA:

--Phase out Project Utility as a special effort. Complete promising investigations and initiate compliance actions within a specified time frame. Any remaining cases should be folded into the wholesale investigations program.

--[illegible]

--[illegible] to identify [illegible]

--Provide [illegible] the Lenders' proper [illegible].

As [illegible] Legislative Reorganization Act of 1970 [illegible] to submit a written statement on actions [illegible] to the House and Senate Committees on Government Operations not later than 60 days after the date of the [illegible] to the House and Senate Committees on Appropriations with the agency's first request for appropriations made more than 60 days after the date of the report.

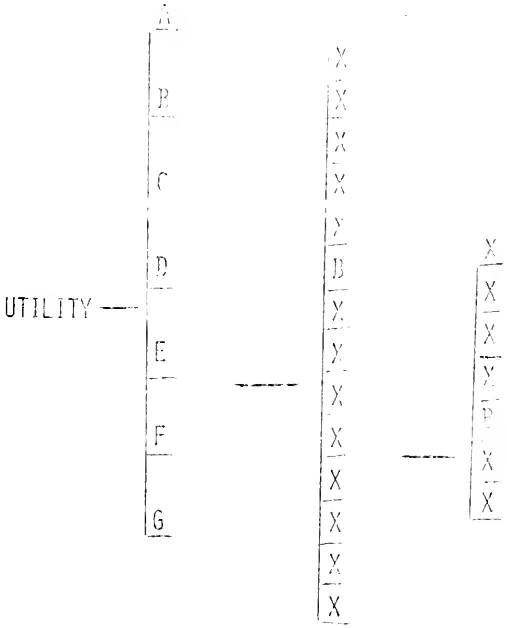
Because of their expressed interest, we are also furnishing copies of this letter to the Subcommittee on Oversight and Investigations, House Committee on Interstate and Foreign Commerce; Subcommittee on Conservation, Energy, and Natural Resources, House Committee on Government Operations; [illegible] Committee on the Judiciary.

We wish to compliment your staff, both at headquarters and at the regional offices we visited, for their fine cooperation during this review.

Sincerely yours,

Monte Canfield, Jr.
Director

Enclosure


UTILITY
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FEA COMPLIANCE MANUAL

Deputy Associate Assistant Administrator
Compliance and Enforcement

Attached DRAFT Manual

All Regional Directors
Compliance and Enforcement

The attached DRAFT Manual is provided for your information in preparing for the San Francisco meeting. Your comments and suggestions will be welcomed at that time.

/s/
Hal Butz

Attachment

56-499 O - 75 - 18

Harold a. Bitz, Jr.

FEDERAL ENERGY ADMINISTRATION

16 JAN 1975

Deputy Associate Assistant Administrator
Compliance and Enforcement

Compliance and Enforcement Manual

All National Office Compliance
and Enforcement Staff

To avoid some of the confusion that has resulted when guidance was issued in different formats by various sources and levels of Compliance and Enforcement authority, all policies and guidelines relating to the Compliance and Enforcement program should be incorporated in the Compliance and Enforcement Manual as soon as possible.

The manual has a section for each significant category of activity and should be sufficiently detailed to provide, in a single source, key policy, training, and technical guidance needed by Compliance and Enforcement field personnel. It should be frequently updated to reflect changes in the regulations and compliance policies.

A basic Compliance and Enforcement Manual already exists, but it needs substantial revision and amplification. Accordingly, the recently approved Compliance and Enforcement Manual is to be updated by March 15, 1975.

In order to insure a well coordinated and uniform product, overall responsibility for manual revision and issuance continues with the Enforcement Policy and Coordination Division.

Division Directors charged with developing policy, as well as technical and procedural guidance for the Regional Compliance and Enforcement staff should prepare such guidance in the style and format of the basic manual.

The initial and all subsequent revisions to the Manual will be developed and issued in accordance with the attached issuance system.

Your cooperation in the expeditious completion of this project is essential.

-2-

Please direct any questions concerning the Manual or the Compliance and Enforcement directives system to Chris Garringe:

Harold a. Butz, Jr.

Hal Butz

FEA COMPLIANCE COMPUTER SYSTEM

25 FEB 1975 FEDERAL ENERGY ADMINISTRATION

Associate Assistant Administrator,
Compliance

Request for Extension of On-Line Systems Services

Director, Office of Data Services

Per your memorandum of February 18, 1975, I would like to request an extension of the services of On-Line Systems to the Office of Compliance until such time as we feel that Optimum Services, Inc. can meet our needs. Specifically, we require: (1) Continued keypunch support; (2) Continued visual display capabilities; (3) Reprogramming of all regularly scheduled reports; and, (4) Continuous manual update capability for the Personnel Locator System. Data Services has not been able to assure us that these requirements can be met within the time frame outlined in your memo of February 18.

I am sure that you are aware of the importance Compliance places on our computer system. We cannot afford a loss of a few days or weeks in our data capabilities. It is imperative that we be granted this extension if we are to continue uninterrupted in our Compliance activities.

Signed

Avrom Landesman

FEDERAL ENERGY ADMINISTRATION

APR 16 1975

MEMORANDUM FOR: Albert Linden
Director, Office of Data Services

FROM: Fred W. Stuckwisch
Acting Associate Assistant
Administrator
Office of Compliance

SUBJECT: Transition of Data Processing Systems

As you are aware, we are in the process of converting our data system from On Line Systems to Optimum Services, Inc. When this transition began, we were promised that this transition would be complete on or before March 31. However, we were cut off from On Line Systems on February 28 and to date we still do not have any case control computer capabilities. It now appears that it will be at least two or three weeks before we are able to input data and extract reports from the system. This is an intolerable situation and one we cannot live with much longer.

We are being asked to respond to numerous requests, including congressional committees, on various aspects of the Compliance program. Much of this information is contained in our data base which is current only through January 1975. We are having increasing difficulty explaining why our data is not current and why we cannot estimate when we will have current data.

Accordingly, I am bringing this critical problem to your personal attention and requesting that you take immediate action to resolve this problem so as to permit us to resume the use of this computer facility as soon as possible.

Please advise me of the date we will get our system back on line.

MAY 29 1975

MEMORANDUM FOR: Daniel B. Rathbun
Deputy Assistant Administrator
for Data
Office of Policy and Analysis

FROM : Gorman C. Smith Signed
Assistant Administrator
Regulatory Programs

SUBJECT : Data Services Requirements for the
Office of Compliance

After some two and one-half months of being without the case control and tracking system, the Office of Compliance is now on line with Optimum Systems.

As presently designed, however, the system is not adequate to meet the pressing requirements of the Office of Compliance. We use it as a management tool for resource planning, manpower utilization and case monitoring and analysis. Some 18 requests from congressional committees for compliance data have intensified the needs for accurate and timely information.

There are three major capabilities not provided by the present system that are essential to the Compliance program.

<u>First, we need a data management language</u>. As the system is now programmed, only ten reports can be extracted from the data base. The system does not provide the capability to extract specific case information such as cases by name, cases by product or investigation type, or cases by geographic location. The system does not provide the capability to extract specific status data such as all or specific NOPVs or POs, cases transferred to General Counsel, or dollar amounts of NOPV's and penalties. With the data management language system, we would have these and many other capabilities.

Second, we need multiple access to the case tracking system. Currently, only one person can use the case tracking system at a time. We must be able to extract data, correct errors, add input data simultaneously using multiple sources in order to maintain a current file and provide timely reports.

Third, we need regional access to the system. Direct input from the regions is necessary to provide current information and eliminate the screening and mass input processing at the National Office. Most of the Regional Directors of Compliance have requested this capability and could effectively utilize it.

Only with the addition of these capabilities (which we understand will not be a major undertaking) can the Optimum System adequately serve our data needs. Therefore, I will appreciate hearing as to when we might expect to have them operational.

h/wrtn note: "Dan, if this presents major problems let's discuss, pls. G."

FEA POLICY ON NATURAL GAS LIQUIDS

FEB 18 1975

MEMORANDUM FOR DOUG ROBINSON
Assistant General Counsel
for Compliance and Litigation

SUBJECT: Status of NGL Regulations

Will you get for us a timetable setting forth the dates we might expect (1) issuance of clarified price regulations for NGL's for the period May 15, 1973 thru December 31, 1974, and (2) issuance of a revision to Subpart K of Section 212, that will reflect industry and staff comments?

Because of the delay in clarifying the regulations with respect to natural gas liquids for the period May 15, 1973 thru December 31, 1974, together with issuing either a revision or clarifying instructions regarding implementation of Subpart K subsequent to January 1, 1975, we have delayed initiation of audits of gas plant operators and delayed finalization of audits started involving gas processors under the project manipulator and speculator programs.

We have a further need to know as the regional offices are currently in the process of hiring additional staff to perform these audits and certain lead time is required for (1) training such staff, and (2) planning for their effective utilization.

If I or any member of my staff can do anything to facilitate resolution, please let me know.

Signed

Fred W. Stuckwisch
Director
Refinery Audit and Review Program
Compliance and Enforcement

FEDERAL ENERGY ADMINISTRATION

Date: APR 8 1975

Reply to Attn of: Gorman C. Smith
Acting Assistant Administrator
Regulatory Programs, FEA

Subject: Propane Pricing Problems

To: Dudley E. Faver
Regional Administrator
Region VIII, FEA

This is in response to your memo to Frank Zarb of February 26, 1975 on the above subject.

With complete candor, there are a multiplicity of problems involved in FEA's arriving at a solution on how to treat natural gas processing facilities - both before January 1, 1975, and currently.

First of all, when regulations on pricing natural gas liquids were first issued by the Cost of Living Council - which were subsequently adopted by FEO and later FEA - no real consideration was given to NGLs produced from natural gas. Probably due to the extreme complexity of the differing arrangements which exist between royalty owners, extractors and fractionators of NGLs, this situation continued until the first actual attempt to establish rules was published on December 24, 1974, effective January 1, 1975.

The basic concept of the December amendment was first published for comment in September, 1974, and comments received indicated some of the varied facets of the NGL problem but, perhaps because the industry still did not believe FEA was actually serious in its approach, comments received after the December publication have made the problems involved even more apparent.

In addition to current treatment of NGLs, FEA must determine how to deal with gas processors during the 18 months during which they were literally ignored. A strict adherence to FEA regulations would mean that any gas processor that raised prices over May 15, 1973, levels would be in violation. Requiring refunds of such over charges would benefit the consumer but in many cases the funds have been reinvested in seeking other production. Securing refunds from royalty owners would be even more difficult.

On the other hand, FEA did nothing during this 18 months to indicate to gas processors that they should be complying with FEA regulations. No form was provided which corresponded to gas processing operations; gas processors that did not attempt to file on the closest applicable form (Form 96) were not queried by FEA on the failure to file as were crude refiners; no attempt was made to audit gas processors or if the attempt was made no NOPVs were issued (except in a few cases). There was even a question, still not totally resolved, as to the application of the stripper well exemption although a December 24, 1974, ruling finally addressed the problem, again 18 months later. Many gas processors quite honestly felt they were either not under FEA control or that they were abiding by FEA regulations, a sentiment FEA did nothing to disabuse.

I would indeed welcome your opinion on what constitutes fair and equitable treatment under these circumstances.

With regard to the seven specific points on which you recommend consideration in making final determination, please be assured they are very prominent among the issues we are trying to resolve. I might mention that studies we have conducted on the cost of operating a gas processing plant show a figure as low as four-plus cents a gallon only for plants processing natural gas at 25¢/MMBTU and that when payout and profit are added the total reaches well above seven cents a gallon. As I'm sure you are aware, the volume and liquid content of the natural gas being processed also have a bearing on the costs involved.

In conclusion, I would be very interested in any additional suggestions you have on retroactive, current and prospective treatment of gas processing plants and NGLs. I too hope for any early resolution to these problems and totally sympathize with your concerns as they are also mine. Once everything gets sorted out we can concentrate on ensuring that the historic propane user receives product at the lowest price possible with relation to a maximum supply.

Propane Pricing Problems 4/17/75

Dudley E. Faver
Regional Administrator, Region VIII

Gorman C. Smith
Acting Assistant Administrator
Regulatory Programs
Federal Energy Administration
Rm 6001C, 2000 M Street
Washington, D. C. 20461

This is in reference to your memorandum to me of April 8, 1975 wherein you asked for our comments on what constitutes fair and equitable treatment prior to 1-1-75 and on current and prospective treatment of gas processing plants and NGLs..

You state that "Once everything gets sorted out we can concentrate on ensuring that the historic propane user receives product at the lowest price possible with relation to a maximum supply." Strangely enough we feel that the price NGL processors receive for those products have relatively little impact on supply. We feel that our regulations have been approaching this problem from the wrong angle. Following are statements which outline the historical makeup of NGL processor situation.

1. NGLs from gas wells are a byproduct from the business of distributing natural gas or methane.

2. Unless these NGLs are extracted from the gas stream, the methane cannot be marketed through normal distribution systems as the NGLs will clog the lines and freeze the meters. Therefore threats made by NGL processors to stop extracting NGLs, if carried out, would require shutting down the wells -- a course we believe it highly unlikely they would pursue.

3. NGL processors have traditionally made their profit from sales of natural gas.

4. The NGLs extracted in preparing the natural gas for market have traditionally been used only as a method of reimbursing the producer or royalty owner for the total natural gas stream including NGLs.

5. Thus, natural gas which goes into interstate commerce is controlled by FPC.

6. In many cases the price of natural gas in intrastate commerce is not controlled other than by the allowable price charged to consumers under local utility commission regulations.

7. Increasing prices on NGLs is one method where it is possible for NGL processors to avoid the cumbersome rate making process on natural gas and increase their income.

8. When compared to a refiner, an NGL processing plant is a simple and inexpensive thing to construct. They consist only of a series of units where the mixture is heated to various temperatures and that result in each NGL reaching the boiling point, vaporizing and then being condensed off.

We do not see costs in a natural gas processing plant as being primarily attributable to producing NGLs. They are more logically attributable to the production of methane. As an example of the differing result of today's current situation; when taken on a BTU basis, the price on propane and natural gas are poles apart. People in this area will receive a combination gas and electric bill of 50 to 60 dollars to heat a house of 2500 sq. ft. Those using propane to heat the same space will pay in the 300 dollar range.

Historically prices paid to producers by NGL plant operators for NGLs were a flat rate established by contract. Recently, some companies have entered into contracts wherein they pay a percentage of the sales price to the producer or royalty owner, thus beginning to retain part of the price received for NGLs.

How to address the issue of fair and equitable treatment prior to 1-1-75. NGL processors had shrinkage and used refinery fuel on May 15, 1973, the same as they do today. We can either assume that there has been little, if any, increase in either of these two items or if we choose to allow them to take the increase we should insist that the shrinkage formula used to compute May 15, 1973 shrinkage include a computation for refinery fuel and that the total shrinkage be computed on a BTU basis. Then the shrinkage formula on the current computation including refinery fuel and done on a BTU basis could be directly compared with the May 15, 1973 figure which would give us a true picture of actual increase, if any, in this area.

Since these company profits traditionally come from custom processing at a flat rate or the sales of natural gas, there is no reason for increasing the price of NGLs except to encourage the producer of natural gas to explore for further supplies. We therefore feel that the only treatment of these plants prior to 1-1-75 that is equitable

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(especially when you consider the consumer) is 1) apply the regulations as written which would allow almost no increase, or 2) to use the May 15, 1973 price and allow (as we do in refineries) the addition of cost justified nonproduct cost increases.

As far as current and future treatment of NGL processors, we again see only two alternatives. 1) Stay with the May 15, 1973 price plus cost justified nonproduct increases or 2) use the 8½ cents granted under subpart K, the ½ cent limit on nonproduct cost increase and increased shrinkage with the stipulation that the May 15, 1973 computation and the current computation both be based on BTU equivalents. This would give a price somewhere in the 11 cent range for propane (slightly higher for other products) which is on the average double the May 15, 1973 price. At least in this area, after going through the distribution chain, the price to the consumer would then be in the 20 to 30 cent range. This would place most residential users in the 200 to 300 dollar a month category on heating bills. We respectfully submit that this is unfair when compared with his urban neighbor who pays $60 per month.

Discussion of possible alternatives to this problem with General Counsel indicated two different concerns with which we disagree. They have stated that any option which would result in less violations would diminish the amount of manpower required to investigate. On the contrary, it is the complexity of the regulations which determine the length of the investigation and not the number of violations. The second concern voiced by General Counsel is that the NGL processor would have difficulty both in making the refunds to the distributor and other purchasers and in obtaining refunds from producers. We frankly believe this process to be exceptionally simple and easy to accomplish; credit memorandums could be issued to companies or refunds made over a period of a few months to purchasers while at the same time withholding previous overcharges to producers on current purchases. The producer would then withhold from various royalty owners. The outcry from the affected parties in the royalty owner-producer area would doubtless be substantial. However, we would rather endure that than the constant complaints from homeowners, retail dealers and the consuming public and the respective congressional delegates.

Whatever the decision in this matter, we urge that it be made soon and everyone in FEA, the NGL industry and the public will at least know what they have to contend with. If we can be of any assistance, please feel free to call on us.

FEDERAL ENERGY ADMINISTRATION
RESPONSE TO REQUEST FROM
HONORABLE EDWARD M. KENNEDY
CHAIRMAN
SUBCOMMITTEE ON ADMINISTRATIVE
PRACTICES AND PROCEDURES
APRIL 23, 1975

/ Subcommittee note: The full questions submitted by Senator Kennedy in his letter of April 23, 1975, appear in the correspondence part of this appendix. Some of the responses and enclosures have been deleted because the material appears elsewhere, or contains confidential data relating to pending exforcement actions. /

QUESTION 2: What are FEA's procedures and guidelines for initiation, preparation, issuance, negotiation and settlement of a Consent Agreement/Order, Notice of Probable Violations and Remedial Order for each of FEA's Compliance and Enforcement Programs--Refinery Audit and Review, Propane, Utility Suppliers, Crude Oil Producers, Wholesalers/Resellers and Retailers, and any other FEA Compliance and Enforcement programs?

A. Cite the authority for each procedure and guideline.
B. List the date that each procedure or guideline was adopted or implemented.
C. List each procedure and guideline that is in writing, and supply a copy of each written procedure and guideline.
D. Have any of these procedures or guidelines been revised since implementation or adoption? If so, outline the changes, give the dates of implementation and explain why the changes were necessary.
E. Have all FEA Regional Offices uniformly applied these procedures and guidelines? If not, outline Region-by-Region deviations from these procedures and guidelines and state whether the FEA National Office authorized these deviations.

ANSWER 2: With the exception noted below, the procedure for issuance of the documents mentioned is essentially the same under all programs. Under the RARP, Producer and Utilities supplier investigation programs, NOPV's, RO's and consent agreements are handled in the same manner as other investigations except that review and concurrence are required by the National Office of Compliance and the General Counsel's

Office prior to issuance. For the Propane Project, telephone concurrence (but not necessarily review) is required prior to release.

For all cases, the initial decision to issue is made by the investigator/auditor in conjunction with his or her Area Manager. The issuance is then cleared by the Regional Director of Compliance and Regional Counsel. If the firm is being investigated under one of the special projects, concurrence as described above is sought from the National Office.

Notices of Probable Violation, Remedial Orders, and Consent Agreements are signed by the Regional Administrator or one of his delegates.

A. Authority for the issuance of NOPV's and RO's is found at 10 C.F.R., Sections 205.190-193.

B. The procedures outlined in Part 205 were adopted on October 1, 1974.

C. Most information requested was included in the first submission of May 27, 1975 to the subcommittee as Attachment A. Transmitted herewith are copies of additional instructions dated March 11, 1974 dealing with the FEO-IRS interface handling of remedial orders under the refinery audit program (See Exhibit 1).

D. The basic procedures have remained essentially the same since FEA assumed the compliance function from the IRS in June 1974.

There currently is no express authority in the regulations for Consent Agreements, although the FEA believes such authority to be implicit. However, a notice of a proposed rule which would specifically provide for a settlement of FEA compliance cases by consent order was published in the Federal Register on May 14, 1975, and may be adopted in the near future. There is no formal written "authority" for the internal procedures by which FEA consent agreements and orders, notices of probable violation and remedial orders are prepared and issued. Such authority is implicit in the

Emergency Petroleum Allocation Act, the Federal Energy Administration Act and Executive Orders issued thereunder.

E. Some regions have acknowledged instances where they have not obtained concurrence from the National Office prior to the issuance of Consent Agreements/Orders, Notices of Probable Violation and Remedial Orders, under special programs. However, corrective actions are initiated as the National Office becomes aware of all Consent Agreements/Orders, Notices of Probable Violation, and Remedial Orders issued by the Regions through the various reporting systems. In Region VII and IX these deviations were essentially oversights.

Region VI is the only region that has published procedures for the handling of NOPV's and RO's that in essence were not reiterations of National Office policy. These procedures relate to the Refinery Audit Program. (See Exhibits 2 and 3) and deal primarily with the region's internal

handling of NOPV's and RO's and these procedures do not deviate from the requirement to obtain National Office concurrence prior to the release of NOPV's and RO's. The last set of procedures on handling NOPV's and RO's dated April 8, 1975, copy attached, (Exhibit 3) were developed in conjunction with personnel of the National Office. They include guidance on the development of the factual information necessary for an NOPV and RO and provisions for handling agreements.

QUESTION 3: What are FEA's procedures and guidelines for audits in connection with the Refinery Audit and Review, Propane, Utility Suppliers, Crude Oil Producers, Wholesaler/Reseller and Retailer audit programs, and other FEA Compliance and Enforcement programs?

A. Cite the authority for each procedure and guideline.
B. List the date that each procedure or guideline was adopted or implemented.
C. List each procedure and guideline that is in writing and please supply a copy of each written procedure and guideline.
D. Have any of these procedures or guidelines been revised since implementation or adoption? If so, outline the changes, give the dates of implementation and explain why the changes were necessary.
E. Have all FEA Regional Offices uniformly applied these procedures and guidelines? If not, outline Region-by-Region deviations from these procedures and guidelines and state whether the FEA National Office authorized these deviations.

ANSWER 3: A. The authority for the present FEA price and allocation program originated with the Emergency Petroleum Allocation Act of 1973 and the Economic Stabilization Act of 1970. On December 26, 1973, the Phase IV price control program of the Cost of Living Council, covering petroleum products and crude oil, was transferred from the Council to the Federal Energy Office, the predecessor of FEA. On January 15, 1974 the price control regulations officially became FEO regulations. Authority for FEA's internal procedures for audit of companies subject to the

Mandatory Allocation and Price Regulations is implicit in the Emergency Petroleum Allocation Act, the Federal Energy Administration Act and the Executive Orders issued thereunder.

B. The special compliance programs and the approximate dates that procedures and guidelines related thereto were adopted or implemented are as follows:

Program	Date
Refinery Audit Review Program (RARP)	Nov. & Dec. 1973
Propane Project	Feb. 11, 1974
Utilities Program	Jan. 15, 1975
Crude Producers	Nov. 6, 1974
Wholesaler/Reseller and Retailer Programs	Since inception of FEA program

C. The information requested in this part was included in the first submission of May 27, 1975 to the Subcommittee as attachments B through F. Enclosed as exhibits are some additional guideline documents related to the Refinery Audit and Utilities Programs. Enclosed as

Exhibit 1 is guidance for the Refinery Audit Program issued March 11, 1974, April 10, 1974, and April 29, 1974. This guidance deals primarily with the interface between FEO and IRS on handling of refiner audits and supplements the guidance previously provided on attachment C-2 of the May 27 submission. Enclosed as Exhibit 2 is guidance on utilities audits which has been issued since January 1975. It supplements the instructions contained in the utility audit guidelines issued January 15, 1975, and included in attachment E of the information previously provided.

D. Revisions to procedures and guidelines for each program area are discussed below:

Refinery Audit Review Program (RARP)

Revisions to the Refinery Audit and Review Program guidelines were as follows:

January 1974
March 1974
April 1974
October 1974
November 1974
February - May 1975

The audit guidelines were revised through November 1974 to reflect changes in regulations and knowledge gained in prior audits and analyses of petroleum industry practices. By January 1975, experience had shown that certain portions of the program should be given different priorities and the modular approach was formulated in February. Briefly, the modular approach is the examination order of priority, with a report being issued at the completion of the audit of each subject, as opposed to an audit of all the subject matter contained in an audit program and the issuance of one overall report covering the entire examination. This approach provides a better utilization of resources by channeling efforts into problem areas. Audit guidelines are currently being revised into Audit Modules in order to better implement the priority system. These new or revised modules again reflect an update due to changes in regulations, the field experience of the RARP teams in the regions, and trend analysis in the National Office.

Utilities Program

Minor revisions to the utilities program have been made with respect to reporting. No substantial changes have been made but the entire program is under review with the intent of completing investigations of suppliers of utilities by December 31, 1975. While the basic investigation procedures will remain the same, significant changes in methods for targeting potential violations are under development. This revised program is to be implemented in June 1975.

Crude Producers

Four updates to the Project Producer Manual have been issued in response to developments which were not anticipated in the original manual.

Briefly these were:

1. November 15, 1974 -- Reprint of certification of crude petroleum sales regulations and listing of State oil and gas agencies.

2. December 9, 1974 -- Description of producer accounting methods; guidelines for compliance remedies; copy and explanation of Form FEA P302-M-); and list of participants in training session.
3. December 29, 1974 -- Explanation of the concept of unitization; elaboration of the application of the "special release rule," explanation of application of §210.62(c) to crude oil pricing.
4. February 4, 1975 -- Effect of rollback agreements on Entitlements Program calculations.

Other Programs

In February 1975 a Compliance and Enforcement Handbook was prepared, setting forth a definitive set of operating procedures for FEA auditors and investigators. Copies were previously provided in attachment B of the May 27 submission. These procedures and guidelines for the conduct of routine investigations that are not part of special National Office-directed compliance programs reflect the general shift in compliance strategy away from the retail

sector to producers, refiners and wholesalers, as encompassed in the Compliance and Enforcement Action Plan approved by Administrator Frank Zarb in February 1975.

E. When a program is initiated, problems of audit approach and coverage that develop are resolved by the Regional Coordinators working directly with the National Office Coordinator. After the program has been functioning and the procedures are clarified, no deviations are allowed unless they are cleared through the National Office Coordinator. As with all audit and investigative procedures, individual auditors are expected to exercise individual judgment and adapt to specific factual situations.

Region VI has published some guidance dated April 8, 1975 (included as Exhibit 3 to Question 2) that deals with how auditors

should proceed in developing the factual information necessary to support NOPV's and RO's. For the most part, these instructions are concerned with the use of discussion and written inquiries as audit techniques in the resolution of factual problems connected with audits of refineries. This guidance was developed in conjunction with personnel from the National Office.

QUESTION 4A: Who determines whether a violation of FEA Regulations was intentional or unintentional, what criteria and procedures are used in making that determination, when were these procedures and criteria adopted and implemented, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

ANSWER 4A: A determination as to whether a violation of FEA regulations was willful must be made separately for each case and must be based on an analysis of all the facts and circumstances involved in the particular case. This legal standard of willfulness in FEA and Economic Stabilization cases is whether the person under investigation, "having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements." United States vs. Futura, Inc. 339 F Supp. 162, 168 (N.D. Fla. 1972).

Among the factors that are considered are:

(1) the company's general familiarity with the FEA regulations;

(2) the complexity of the regulation involved and the company's prior experience with its application:

(3) whether company records reflect actual consideration of the applicability of the regulation to the particular practice being challenged;

(4) whether the company sought legal or accounting advice prior to taking the challenged action;

(5) whether the company sought a ruling from FEA regarding the conduct under attack;

(6) whether previous FEA enforcement actions concerning the same or similar actions were known to the company or were likely to be known because of media coverage;

(7) whether the company attempted to conceal the practice by manipulation of records or alteration in customary business practices.

The determination of whether a particular violation was willful is made initially by the regional or national compliance office responsible for the investigation, sometimes with the assistance of Regional Counsel. A final determination of whether the evidence of willfulness is sufficient to warrant referral to the Department of Justice for criminal prosecution is made by the General Counsel's Office. There are no documents as such describing the abovementioned procedures, but these matters have been

discussed frequently at conferences of Regional Directors of Compliance and at meetings of Regional Counsel. It is believed that these procedures are, in general, uniformly applied by all FEA units responsible for enforcement.

QUESTION 5: Who determines whether to seek a Consent Agreement/Order, issue a Notice of Probable Violation or issue a Remedial Order, what criteria and procedures are used in making these determinations, when were these procedures and criteria adopted and implemented, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

ANSWER 5: Normally the FEA office responsible for conducting a particular investigation makes a preliminary determination as to whether a violation of FEA regulations has occurred. If it is believed after a significant stage of the investigation that a violation has occurred, the general practice is to convey that belief to the company under investigation. If the company accepts the investigating office's position and agrees to appropriate remedial action, a Consent Agreement is prepared for execution by the parties. Where the company does not accept the FEA's initial determination, the FEA office responsible for the case prepares a Notice of Probable Violation (NOPV) for issuance against the company. Occasionally, some Regional Offices have utilized NOPV's essentially as information gathering devices. While this practice was apparently not commonplace, a specific directive was issued to the Regional Offices on April 30, 1975 precluding the use of an NOPV until a "significant stage of a factual

investigation had been completed ..." (See Exhibit) The NCPV is usually reviewed and concurred in by FEA counsel and the document itself is signed by the Regional Administrator, or one of his delegates or, in cases handled exclusively from the National Office, by the Assistant Administrator for Regulatory Programs or one of his delegates. The level at which clearance for a Consent Agreement or NOPV is required in particular cases is outlined above in answer to question 2.

The NOPV informs the company of the regulatory violations it is alleged to have committed and of its right to file a written response to the charges within ten days. If a company elects to settle on FEA's terms following issuance of the NOPV, a Consent Agreement is drawn up and executed by the parties. If the company contests the FEA'S NOPV and the office which issued the NOPV remains of the view, after reviewing the company's response and considering other asserted defenses, that a violation did occur, it prepares a Remedial Order (RO). The RO is issued by the Regional Administrator or one of his delegates or by the Assistant Administrator for Regulatory

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Programs after being submitted to the same review procedures as the NOPV received.

In certain rare instances, FEA may issue a Remedial Order for Immediate Compliance without going through the NOPV procedures. Such an order may be issued where FEA believes that irreparable harm will occur unless the violation is remedied immediately and that the public interest requires avoidance of the delay that would be occasioned by following the normal NOPV procedure.

The criteria for the issuance of NOPV's, RO's and Consent Agreements are set forth in Sections 205.190-196 of the FEA Regulations. These criteria are consistently applied by all FEA Regional Offices, although there are some slight variations among regions in procedures by which these actions are taken.

QUESTION 6: Who determines the nature and amount of overcharges to be refunded for a violation of FEA Regulations, and the form such a refund should take (e.g., a direct refund, a price rollback, a reduction in company "banked" costs, or other) what criteria and procedures are used in making that determination, when were there procedures and criteria adopted and implemented and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

ANSWER 6: The FEA Office responsible for taking final enforcement action determines the nature and the amount of overcharges for a violation of FEA regulations. In pricing cases, that office also determines whether the violation merely involved an improper calculation of costs, prices or unrecouped costs, or whether the violation involved actual charges to customers in excess of maximum lawful levels. In addition, in certain cases that office also determines the appropriateness of the class of purchaser to which a particular customer was assigned or whether there have been changes in customary business practices in violation of FEA regulations.

In instances where cost calculations were improper but did not result in actual overcharges to customers, FEA policy is to require as the appropriate remedy the recalculation of increased costs available for pass-through to customers

on the basis of a correct application of the regulations. Similarly, where treatment of a particular customer was unlawful but has not yet resulted in financial harm to that customer, FEA policy is to order the elimination of the unlawful practice prospectively so that no financial harm will result.

However, where the violation has already resulted in an actual overcharge, it is FEA policy in all such cases to order restitution of the amount of the overcharge to the injured parties. In instances where the injured customers are identifiable, restitution is required to be in the form of refunds or credit advices. Where the injured customers cannot be identified (e.g., customers of retail gasoline stations), the violator is generally ordered to reduce its future prices by an amount and for a period of time that will, in the aggregate, equal the amount of the violation. The general policy has been in existence since the inception of the program. Specific policies were set forth in Rulings 1974-26 and 1975-2 and in guidelines issued to the Regional Administrators implementing Ruling 1975-2. They have also been described in detail in numerous meetings, conferences, and conversations with Regional Directors of Compliance. It is believed that these policies

are consistently applied by all FEA Regions. It should be noted that certain types of violations pose difficult remedy problems, such as where the customers that were overcharged are not identifiable and a rollback might not yield a lower price than would prevail in that market in any event. In such instances, remedies must be tailored to the unique factual circumstances. In some instances where restitution is impossible pre-imposition of severe civil penalties is the most meaningful enforcement tool. Procedures involving civil penalties are described in response to Questions 7, 8, and 9.

<u>QUESTION 7:</u> Who determines whether to seek a civil penalty or a criminal penalty for a violation of FEA Regulations, what criteria and procedures are used in making that determination, when were these procedures and criteria adopted and implemented, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

<u>ANSWER 7:</u> FEA does not have statutory authority to impose either criminal or civil penalties for violation of its regulations or orders issued pursuant thereto. Such penalties can be imposed only by a United States District Court in a case brought by the Department of Justice.

FEA's role is limited to referring such cases to the Department of Justice and to compromising penalties as described in the answer to Question 8. The determination as to whether to seek penalties is, therefore, a joint responsibility of FEA and the Department of Justice. A procedure has been developed with the Department whereby all penalty referral cases are routed through FEA's Office of General Counsel, which reviews them for sufficiency of evidence and proper interpretation of FEA regulations. This procedure, with respect to criminal referrals, is referred to in FEA's <u>Compliance and Enforcement Manual</u> (see Exhibit)

distributed to all regional compliance units on June 26, 1974 and is generally followed by all FEA regions. This procedure has also been the subject of considerable discussion at periodic meetings with Regional Counsel and at conferences with Regional Directors of Compliance.

Criminal penalty cases are referred to the Department of Justice in all cases where there is significant evidence that a violation of FEA regulations has occurred and the violation was willful. There are no express statutory or regulatory criteria for civil penalty cases, and FEA's policy with regard thereto is still being developed. As a general rule, civil penalty cases are referred to the Department of Justice where there is insufficient evidence or willfulness but more than an innocent misunderstanding of the regulations and efforts at a compromise of civil penalties have been unsuccessful. In the absence of a comprehensive policy on this subject, there is and probably will continue to be some variation among FEA's regional offices in forwarding to the General Counsel's office potential referrals of civil penalty cases to the Department of Justice.

<u>QUESTION 8:</u> Who determines whether to seek a compromise on civil penalty in the settlement of a violation of FEA Regulations, what criteria and procedures are used in making that determination, when were these procedures and criteria adopted and implemented, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

<u>ANSWER 8:</u> Although FEA cannot impose civil penalties, it may agree to compromise and collect such penalties in lieu of referral of the case to the Department of Justice, (Section 205.202(c) (2) of the FEA Regulations). The decision as to whether to seek such compromise is normally made by the FEA office responsible for the final determination that a violation occurred, which is usually the FEA Regional Office. Where the case is part of one of the national enforcement projects, the concurrence of the national compliance office is generally obtained.

The criteria used in determining whether to seek a compromise of civil penalties include:

(1) the magnitude of violation;

(2) the extent to which the company attempted to ascertain its obligations under the regulations;

(3) the extent of financial harm to the public resulting from the violation;

(4) the extent to which the company cooperated in the investigation;

(5) the extent to which the company benefitted financially from the violation;

(6) the effectiveness of other remedial action ordered as a result of the violation;

(7) the need for strong deterrence due to widespread violations of a particular regulation;

(8) the degree to which FEA believes that a civil penalty suit would be successful if instituted by the Department of Justice.

FEA's policy regarding compromise of penalties is still being developed. Therefore, comprehensive directives have not been issued. However, guidance has been given to the regions in a memorandum from the General Counsel's Office, issued August 15, 1974, which contained a Model Civil Penalty Solicitation Letter (see Exhibit 1). Also, this has been the subject of considerable discussion at periodic meetings with Regional Counsel and at conferences with Regional Directors of Compliance.

As a comprehensive policy does not currently exist, there is some variation in the way FEA regions exercise their discretion with respect to seeking compromises of civil penalties.

QUESTION 9: Who determines the dollar amount in a compromise on civil penalty, what criteria and procedures are used in making that determination, when were these procedures and criteria adopted and implemented, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

ANSWER 9: The decision as to the proper amount to accept as a compromise of civil penalties is generally made by the same FEA office responsible for determining whether to compromise penalties.

The criteria utilized in determining the amount of penalty that is acceptable include the criteria set forth in response to Question 8, above. In addition, an assessment must be made of the amount of penalty that a court would likely impose if a civil penalty suit were instituted by the Department of Justice. Consideration must also be given to the effect on the overall enforcement program of the time and expense that would be incurred by resort to court action.

FEA's policy regarding penalties is still being developed and no comprehensive directives have been issued. Accordingly, there are some variations in calculating the dollar amount of penalties to be obtained.

QUESTION 10: Who determines which companies are to be audited in each of FEA's Compliance and Enforcement programs, when were these procedures and criteria adopted and implemented, what criteria and procedures are used in making these determinations within each of the programs, and are these criteria and procedures applied uniformly by all FEA Regional Offices? Please supply supporting documentation.

ANSWER 10: The determination of which companies are to be audited varies among the different types of Compliance programs conducted by FEA. For programs initiated by the National Office (Refinery Audit, Propane Project, Utility Suppliers, and Crude Producers) the selection of companies is generally made by the program manager under criteria approved by the Associate Assistant Administrator for Compliance. For the other programs, mostly resellers and retailers, the selection is made by the Regional Offices. The criteria for each program are discussed below.

A. Refinery Audit

For the Refinery Audit and Review Program, the National Office selected the 30 largest refiners for continuous audit coverage. These 30 refiners produce about 85 percent of the petroleum products refined. In addition, Regions conduct audits of small refiners. Generally, the criteria used for the selection of these small refiners for audit are production capacity and the number and type of complaints received.

B. Propane Project

A comprehensive investigation of propane marketing practices was initiated in December of 1973 because:

(a) When FEO assumed responsibility for propane pricing in late December, 1973, the retail price of propane had risen to unacceptable levels.

(b) The costs being allocated to propane by the major oil companies did not explain the retail prices being reported.

(c) The pricing violations discovered by routine audits at the wholesale/retail level also did not explain such retail prices.

Analysis of the propane market coupled with limitations on available manpower led to the establishment of an investigative plan which, although time consuming, provided a logical system to identify firms and individuals involved in suspect transactions.

The plan developed included:

(a) Identifying the source of propane purchased by the major oil companies.

(b) Identifying those who gained title to, and transferred title to, propane while it remained in underground storage facilities.

(c) Conducting investigations at each firm identified as having gained title to determine (1) their purchases and sales to non-historic customers, (2) the ownership of the firm, (3) the corporate or personal relationship with other firms from which propane was purchased or sold, and (4) their compliance with FEA pricing regulations.

(d) Initiating investigations at the additional firms identified through audits conducted.

(e) Correlating at the national level all information developed so that the General Counsel might refer cases to the Department of Justice where appropriate.

C. Utilities Investigation

In mid-1974, FEA Region IV, headquartered in Atlanta, received and began to investigate complaints regarding high prices charged by companies supplying fuel oil to public utilities in the Southeast. In one case, the FEA, the Customs Service and Florida state law enforcement officials executed a search warrant for the business records of a firm supplying fuel to the Jacksonville Electric Authority and a grand jury investigation commenced. That initial case and the increasing public outcry concerning "fuel adjustments" being charged by electric utilities led to further investigation of prices being charged utilities by suppliers of petroleum products. Preliminary investigations by Region IV and Region VI (Dallas) disclosed potential violations of FEA pricing and allocation regulations by firms supplying several public utilities in the South. As a result of these discoveries, FEA announced a nationwide inquiry directed at suppliers to electric utilities.

Each region was directed to select at least two utilities in its geographic area and to audit the complete fuel oil supply chain of each. They were originally directed to commence the audits for at least two utilities by January 15, 1975 and complete them by March 15, 1975. As the complexity of the supply chains became apparent the 60-day completion target was abandoned. We are now developing a plan to audit the suppliers of all utilities by the end of the calendar year.

D. Crude Producers

The investigations and audits of crude oil producers center principally upon the improper classification of "old" oil, which is subject to price controls, as "new", "released" or "stripper-well" oil, which are not subject to price controls. The investigation concentrates principally on independent producers, since the crude oil production of the major integrated oil companies is audited under the Refinery Audit Program.

In October 1974, FEA analyzed computer data derived from the Cost of Living Council's Petroleum Industry Monthly Report (Form CLC-90)

and found that some companies were reporting significantly increased amounts of new oil. Based on this analysis, a list was prepared of all independent crude oil producers reporting 25% or more of their total production as new oil. From this list an initial 125 independent crude oil producers were selected, on the basis of geographic distribution and the availability of regional manpower resources, for the initial round of audits. This first round was intended, among other things, to determine how widespread violations were. In addition to the National Office directed effort, certain regions have initiated audits of other crude producers using locally developed critiera.for selection of companies.

E. <u>Other Programs</u>

The National and Regional Offices of Compliance are involved in a number of compliance activities not considered part of the special programs. FEA's ten regional offices routinely oonduct pricing and allocation investigations of wholesaler/resellers, retailers, producers and propane dealers. Originally, IRS was swamped

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with complaints about alleged price increases in the retail sector. By the end of March 1974 IRS had received 128,000 complaints, 90% of which related to retail gasoline stations.

During these first six months and for some time thereafter, there were not published standard compliance procedures. The investigators were operating in a crisis environment with locally established procedures and some national guidleines. The bulk of the workload was in response to the complaints received in the early stages of the program. However, in addition to complaints, some sweeps of certain geographic areas and random checks were made. Few systematized targeting procedures were in effect.

When FEA assumed total control of the compliance and enforcement program, the National Office conducted a major reassessment of the program priorities and developed a new compliance strategy.

This new strategy resulted in a shift of emphasis from the retail sector to producers, refiners and wholesalers. Because of this shift, Compliance now has a smaller number of cases than in the early days of the program. However, the cases are far more complex and, accordingly,

take longer to complete than before. FEA's new posture of initiating target selection rather than responding to complaint has resulted in part because the number of complaints from the general public has declined. Although complaints and patterns of complaints are still one of the criteria used in selection of targets by the field, other information, such as sales volume, data analysis, GAO and Congressional recommendations, media interest, and staff availability, also influence target selection.

In addition, FEA is also moving into the area of computerized compliance targeting and is pilot testing a sampling system for targeting wholesalers and retailers.

QUESTION 11: What are FEA's procedures and guidelines for handling complaints from the public, when were these procedures and criteria adopted and implemented, and are these procedures and guidelines uniformly applied by all FEA Regional Offices?

A. Does FEA inform individuals of action taken and the results of their complaints?
B. Are these procedures and guidelines in writing? If so, please supply a copy.

ANSWER 11: Each written complaint received from the public is evaluated to determine whether the FEA regulations apply at all to the factual situation alleged, whether the issues might appropriately be resolved by an informal conference between the parties, or whether further factual investigation is necessary. Investigations commenced as a result of a complaint are handled in the usual manner. The procedures applicable to written complaints by members of the public are contained in 10 C.F.R. §205. 180-185.

The procedural rules on complaints do not specifically provide that the FEA will inform the complainant of action taken on his complaint. However, the complainant is often informed on an ad hoc basis of the progress of his case except when its disclosure might prejudice an ongoing investigation.

Moreover, as a result of a recent internal review of one region, the National Office has decided that a uniform policy is needed. A proposed policy currently being reviewed would require that all written complaints be answered in writing and that results of investigations initiated by complaints from the public be furnished to the complainant.

Question 12. What are FEA's National Office procedures and guidelines for communication between National Office personnel and Regional Office personnel on the direction and coordination of programs, dissemination and retrieval of program information, inquiries on programs, and program assignments in connection with each of FEA's Compliance and Enforcement programs? Please supply documentation.

Answer 12. National Office guidance and unique coordination instructions for Nationally directed programs are provided in the program material furnished the regional offices. The basic guidance for the structure of communication channels is provided in the draft FEA Manual issued June 26, 1974, previously supplied in section K of the May 27 submission. These instructions provide the framework for a two way avenue of communication for reports, dissemination and retrieval of information, inquiries, assignments, and also as a tool to obtain consistency between regions on like issues.

In addition, the framework provides a method of alerting the regions to problems which arise that may have a broad impact. The procedures and guidelines peculiar to a specific program are implemented with the program guidance. (Documents were previously provided in attachments B through G and K of the May 27 submission).

In an organization as geographically dispersed and with as dynamic a program as FEA's, some communication problems do arise. Attached are copies of documents that have recognized and addressed these problems. (See exhibits 1-6.) Efforts to identify and correct communication problems are an on-going process and as voids or roadblocks are identified they are remedied. Field seminars and task force meetings are held

in regional and national offices to review audit and investigation procedures, to improve our understanding of the industry and increase our practical experience on a nationwide basis.

EXHIBIT 3

Associate Assistant Administrator
Compliance and Enforcement

Case Management

All Regional Directors
Compliance and Enforcement

The following guidance is meant to clarify C&E policy regarding case management and disposition of RO's and NOPV's.

1. Case control and management will remain with the Director for C&E through resolution of the violation, or until such time as the case is referred to Regional Counsel for litigation. Coordination with Regional Counsel, however, will be accomplished as necessary to clarify points of law, obtain advice on legal procedures, or secure interpretations. In an effort to obtain presanction compliance, C&E will attempt to negotiate a compliance agreement with the alleged violator prior to considering issuance of an NOPV or RO.

2. If voluntary compliance cannot be achieved, the Regional Director for C&E or his delegate should consider the issuance of an NOPV as a compliance inducement.

Should the alleged violator then agree to comply and execute a compliance agreement, C&E should prepare a follow-up procedure and close the case without prejudice. If an NOPV fails to achieve compliance and the Regional Director for C&E feels that a Remedial Order is necessary, he will obtain a legal opinion based upon the Regional Counsel's review of the case, and if appropriate, proceed with the issuance of an RO. Should the firm fail to obey the RO, the Regional Director for C&E should refer the case to Regional Counsel with a recommendation for possible litigation.

The primary objective of the C&E program is to obtain a high level of voluntary compliance. In the majority of violation cases, compliance can be achieved through discussions between

the Investigator and the subject in which laws and regulations are explained and the possible sanctions are outlined. Only if such contacts fail to resolve the violation should issuance of a formal notice or order be considered. Moreover, it is not necessary to follow every NOPV with an RO. If at any point in the investigation an equitable settlement is achieved, C&E should consider closing the case with a compliance agreement.

Avrom Landesman

JBetz/car/9/19/74

cc: Subj/Chron/EPC/JBetz

QUESTION 13: What are each of the Regional Office's procedures and guidelines (either verbal or written) for communication between Regional Office personnel and National Office personnel on the direction and coordination of programs, dissemination and retrieval of program information, inquiries on programs, and program assignments in connection with each of FEA's Compliance and Enforcement programs? Please supply supporting documentation.

A. When were these procedures and guidelines implemented?

B. Do these procedures and guidelines adopted by each of the Regional Offices differ from those adopted or implemented by the National Office? If so, outline these differences on a Region-by-Region basis and explain why each of these differences exists.

ANSWER 13: Within the general framework of National Office guidelines the Regional Offices designate a coordinator for each nationally directed program who communicates with the national program coordinator orally and in writing. Activity reports, program narratives, regional memorandums, time reports and informational data are submitted as requested or necessary. A regional coordinator may be assigned one or more programs depending upon their size and regional involvement. The regional coordinators are expected to be the prime vehicle of keeping the supervisors and the Regional Administrators currently advised of program progress. Also, for some programs feedback reports are provided by the National Office.

Some on-going programs can develop problems that involve communications. Certainly communications

were a factor in the uncertainty surrounding the use of NOPV's and RO's in refinery audit compliance cases in Region VI that is discussed in more detail in the answer to question 2.

To assure that all interested personnel are provided the information they need to perform their duties, the flow of some information between the Regions and the National Office may have to be monitored. For this reason some regiors require that National Office personnel contact with first line investigators be cleared through the Regional Compliance and Enforcement Office. Region VI has issued a written procedure covering this and a copy is enclosed (Exhibit 1). This written procedure was adopted January 17, 1975.

EXHIBIT 1

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Received from Jerry Curnutt. Dallas 1/17/75. For distribution RARP person

CARD-REGION VI COMMUNICATION PROCEDURES

Pursuant to the attached CARD and Region VI memorandums the following communication procedures were established by CARD and Region VI Compliance and Enforcement and are in effect:

1) CARD-initiated contact with Region VI audit personnel will first be cleared through the Regional C&E Office and the appropriate Area Manager when

   a) data gathering is involved,
   b) a proposed change to existing audit priorities is involved, and
   c) a proposed NOPV, Remedial Order or Compliance Agreement is involved.

2) All other CARD-initiated contact with Region VI audit personnel will first be cleared through the appropriate Area Manager.

3) All audit personnel-initiated contact with CARD will be cleared through the appropriate Area Manager.

QUESTION 16: State the precise functions, duties, responsibilities and authority of the National Office, the Regional Offices, and State Offices, respectively, in enforcing FEA's allocation and price regulations and in carrying out FEA's compliance and enforcement activities. Please supply supporting documentation.

ANSWER 16: The National Office of Compliance is responsible for the overall development, planning, and direction of a national compliance program for FEA. It is also responsible for insuring the uniform application of FEA's regulations and procedures on the part of FEA's regional compliance offices. The National Office of Compliance develops a workload priority system and designs major audit plans used in the investigations of compliance with FEA regulations. The Office develops regional enforcement staffing workload and activity priority systems, evaluates performance by regional offices in the handling and management of their compliance responsibilities, and develops and operates a national case reporting system. The Office maintains statistics on FEA's enforcement programs from which it evaluates the application of FEA's enforcement policies and guidelines. The National Office of Compliance develops and

operates training programs for FEA's field staff, and it maintains liaison between regions in the handling of multi-regional problems and cases with significant national impact.

FEA's regional offices are responsible for the actual implementation of the enforcement program, including the conduct of investigations to determine whether companies have complied with FEA's regulations. These regional offices also undertake the institution of formal enforcement actions such as the issuance of NOPV's, RO's, consent agreements, and compromises of civil penalties within the framework of the policies, guidelines and workload priorities established by the National Office of Compliance. The regional offices, under the direction of the Regional Administrators and the Regional Director of Compliance, have authority to initiate investigations and to follow through on cases from the inception of the investigation through final enforcement action. In certain cases, having multi-regional impact or cases of significant national impact, the regions are

required to secure the concurrence of the National Office of Compliance before actually instituting formal enforcement action.

In addition, the National Office of Compliance may institute certain pilot programs to investigate compliance in particular areas of the petroleum industry or the effect of FEA's regulations on a particular sector of the economy. Examples of such a pilot project include the recently-initiated national investigation of prices charged by petroleum product suppliers to utilities. During the developmental stage of such national projects, the National Office of Compliance maintains close liaison with the details of ongoing investigations, determines companies to be investigated, and maintains a high degree of regional case review. As a general matter, such national projects are converted into regular regional programs once the details of such enforcement projects have been developed and finalized and investigations became routinized.

State offices do not have authority to initiate formal enforcement action with respect to

violations of FEA regulations or orders issued pursuant thereto. However, the states are encouraged to bring to the attention of the National Office of Compliance or regional FEA offices instances where it is suspected that FEA's regulations have been violated.

FEA has been operating without comprehensive detailed delegations of authority in the enforcement area, with the exception of the general delegation of the Administrator's authority given to Regional Administrators at the inception of the Federal Energy Office. Pursuant to a comprehensive study of general administrative procedures within the agency, FEA is currently in the process of preparing detailed delegations of authority. These delegations will clarify the precise duties and responsibilities of the National Office of Compliance and the regional offices with respect to their mutual enforcement resonsibilities. Such delegations of authority will be executed in the near future.

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